



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

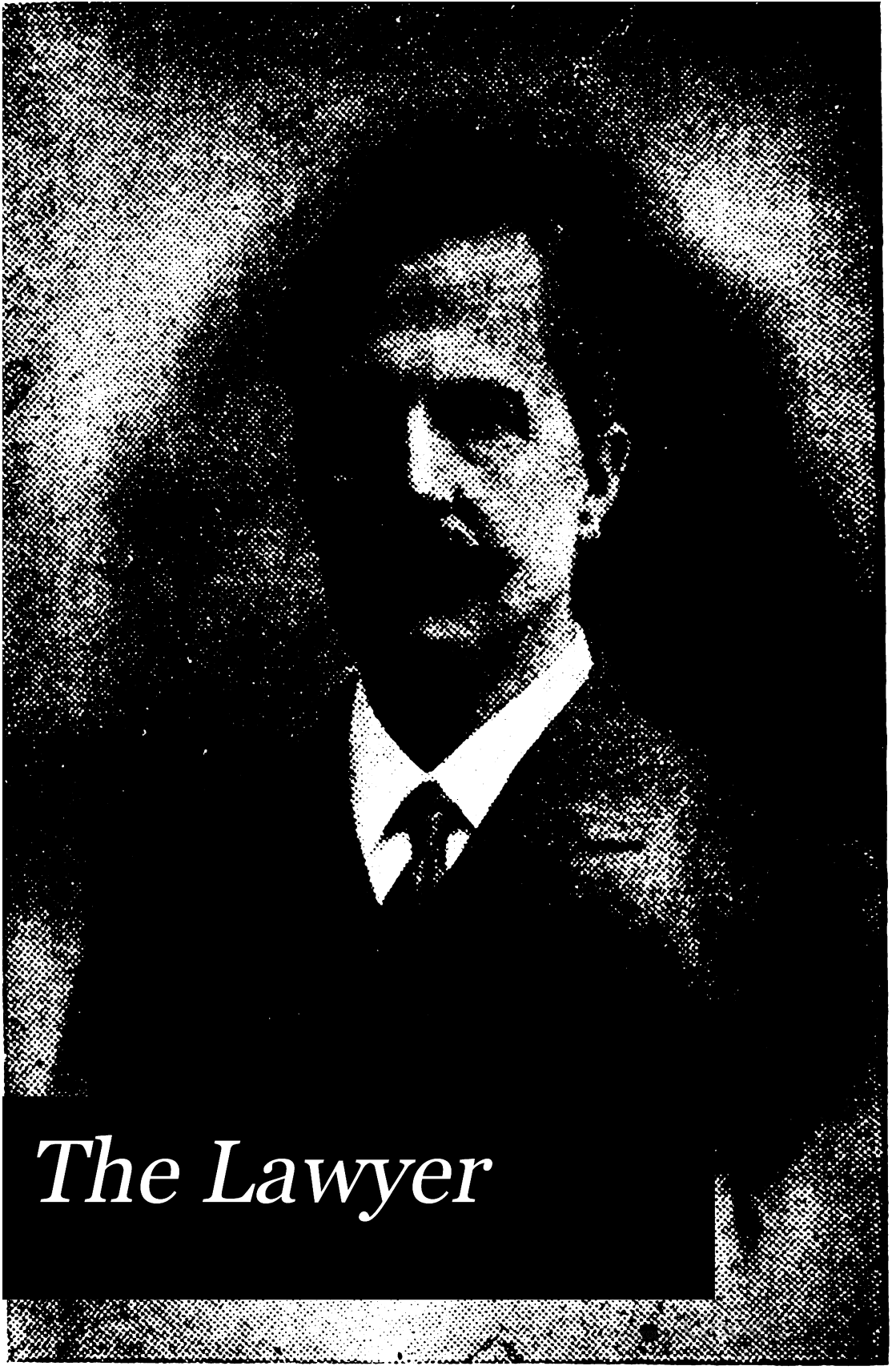
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



The Lawyer

INDIA

Ed. Feb. 1911.

HARVARD LAW LIBRARY

Received FEB 6 1911

Reg. No. B. 276.

THE LAWYER.

A MONTHLY LAW JOURNAL.
in 9 parts each month.

CONTAINING

A digest of all English and Indian reported and unreported cases
Civil and Criminal. [All Acts of Supreme and Bombay Councils
Full Reports of all Privy Council cases distinctly paged.
All Notifications of Government and Circulars of
High Court, Unreported Bombay cases, and Arti-
cles and selected humorous side.

VOL, IX (Index).

1908.

EDITED BY

TRIKAMLAL R. DESAI, B.A., LL.B.

Vakil, High Court, Bombay.

(All Rights Reserved)

Annual Subscription Rs. 4 only.

.....

Note.

(Index of each part is given separately to facilitate reference.)

.....

The Gujarat Printing Press,

AMMEDABAD.

FEB 6 1911

PARTS I. II. III. IV.

Abandonment —Absolute—Absolute possession of—Malki and Shami-		
lat land—Right of defendant to complain—Compensation, 3 P. W.		
R. 333...	...	341
Abkari Act (Bombay Act V of 1878) S. 16 —Country liquor—At-		
tachment in execution of a money decree—Sale, 32 Bom. 157 ...		XIV
— S. 53 —Principle to be applied to cases under the act—Mens		
rea—Master's liability for servants—Defaults, 10 Bom. L. R. 172...		XXXIII
Account —Suit for account—Officer employed by Receiver—Discharge		
of Receiver—Right of proprietor to sue for account—Agent and		
Sub agent, 13 C. W. N. 1035 ...		459
— Settled accounts —Settlement of accounts by passing a pro-		
missory note—No fraud or coercion used—Waiving of examination		
of accounts by plaintiff of his free Will—accounts not to be re-		
opened, 32 Bom. 353=10 Bom. L. R. 281 ...		189, 417
— Will —Executor—Intermeddling with estate—Degree of in-		
terference necessary to charge executor—Account on footing of		
wilful default—Practice—Limitation, 32 Bom. 381 ...		509
Acquiescence —Whether a question of Law and a good ground for		
Revision under Sec. 70 (b) of the Punjab Courts Act XVIII of		
1889 as amended by Act XXL of 1889, 3 P. W. R. 833 ...		190
Act 19 of 1841 —Property—Protection—Hindu Law—Mitakshara sur-		
vivorship—Inheritance—District Judge—Jurisdiction of—Irregula-		
rity—High Court revision, 34 Cal. 29 ...		I
— Ss. 1, 3 and 4 —Intestates' property—Jurisdiction of Judge		
—Review—Rectification of mistake by successor of Judge who		
passed the order—Revision, 7 P. T. Q. 358... ..		301
Act X of 1859 —Civil Procedure Code (Act XIV of 1882) S. 373—		
Applicability of, 12 C. W. N. 893		417
Administrator —Criminal misappropriation by administrator—No		
binding—General observation in judgment, 3 M. L. T. 394 ...		418
Administrror —Suit by—"Letters" must issue before he can sue—Code		
of Civil Procedure, S. 50 and illustration (b) thereto—Non-suit, 12		
C. W. N. 738		141
Administrator pendente lite —Position of after suit—Interference—		
Executor de son tort—Applicable to Hindus, 12 C. W. N. 237 ...		93
Administration —Sureties—Administration bond—Letters of admini-		

nistration—Fraud—Administrator converting assets to his own use—Transfer of bond to administrator—General—Succession Act, S. 242, 35 Cal. 955=12 C. W. N. 802=10 Bom. L. R. ...	553
——— <i>Suit</i> —Whether invalidated by—Mistake of a Court, 12 C. W. N. 481 ...	190
———Estate belonging to a living Hindu debtor—Competency to entertain the suit—Civil Procedure Code, S. 11, 32 Bom. 381=10 Bom. L. R. 519 ...	301, 509
<i>Adverse possession</i> —Acquisition of title—Nature of possession—A question of fact—Jurisdiction on appeal, 3 M. L. T. 299 ...	243
———Mortgage with conditional sale—Illegal foreclosure proceedings—No adverse possession by mortgagee—No effect of mutation of names, 3 P. W. R. 382 ...	418
———Mortgagor and mortgagee—Assertion of proprietary right by mortgagee after invalid foreclosure proceedings, 9 P. L. R. 253 ...	190
———Co-owners, A. W. N. 1908, 239=5 A. L. J. 511 ...	553, 459
———Mortgagor—Dispossessing mortgagee—Mortgagee's rights of co mortgagor, 5 A. L. J. 85 ...	9
<i>Agra Tenancy Act, (Evidence Act) S. 4</i> —Evidence—Presumption Record of plaintiff's name as a co-sharer, A. W. N. 1908, 186 ...	418
——— <i>S. 22</i> —Occupancy holding succession, A. W. N. 1908, 37=5 A. L. J. 771 ...	94
——— <i>S. 22</i> —Occupancy holding succession—"Male lineal descendant"—Illegitimate son—Hindu Law, A. W. N. 1908, 229=30 All. 128 ...	301, 459
——— <i>S. 32</i> —United Provinces Land Revenue Act, Ss. 40 and 44 —Suit for ejectment of trespasser—Civil and Revenue Courts—Jurisdiction, A. W. N. 1908, 3 ...	53
——— <i>S. 32</i> —Division of tenancy—Abatement death of pro forma defendant, 4 A. L. J. 809 ...	53
——— <i>S. 32</i> —Exproprietary holding—Suit for possession of an exproprietary holding, 30 All. 90=A. W. N. 1908, 21 ...	139, 243
——— <i>S. 32</i> —Suit for exclusive possession of an occupancy holding U. P. Land Revenue Act (III of 1901, local) S. 44—Revenue Court—Refusing to correct an entry—Jurisdiction of Civil Court, 4 All. L. J. 769... ..	
——— <i>Ss. 95, 167</i> —United Provinces Land Revenue Act. S. 40—Civil and Revenue Courts—Jurisdiction, A. W. N. 1908, 240 ...	354
——— <i>Ss. 164 and 165</i> , A. W. N. 68=5 A. L. J. 117 ...	190
<i>Alienation</i> —Deed of sale of lands suit to set aside.—10 Bom.L. R.790.	478

—by mutation of names—constructive of mutation proceeds.— Rebutting circumstances of an entry in the settlement—Records that a person is tenant—Recognition of existing right—claim by re- versioners. 2 P. W. R. 371.	110
—by childless male proprietor acquiescence by father of plaintiff. 9 P. L. R. 1908, No. 35.	109
—Acquiescence by father of reversioner.—Son bound by father's acquiescence. 9 Pun. L. R. 41	154
<i>Aliasantany family</i> —Decree against the manager—How far blinding Civil Procedure Code. S. 13.—Resjudicata between co-defendants. 2 M. L. T. 388.	54
<i>Animals</i> —Dog bite—Liability of owner for injuries by. 43 L. J. 682, 43 L. J. 476, 125 L. J. 310.	10(III)
—Wild Elephant—Escape and recapture—Property of original owner when ceases. 12 O. W. N. 547.	244
<i>Appeal</i> —Parties—Estoppel—decree in favour of a non appealing plain- tiff 30 All. 48 A. W. N. 1908 P. 94,	54, 244.
—Estoppel—Execution of a decree for a part of the claim decreed no bar to prosecuting appeal as regards remainder of the claim dis- missed. 2 P. W. R. 369	
— <i>Rent Act</i> (X of 1859) Ss. 150, 161, order refusing to rehear an appeal decided <i>ex parte</i> appeal against such order—Civil Procedure Code ss. 560 and 588. 35 Cal. 799.	509
—Order refusing to file Agreement to refer to arbitration— Appeal—Civil Procedure Code s. 523. 11 O. C. 116	302
—Decree in—When such decree simply confirms decree of lower Court, it does not enlarge the time fixed by the original decree for the performance of conditions precedent. 31 Mad. 28.	190
— <i>C. P. Code</i> . Ss. 473 (c) 458 (23) Decree order—Interpleader suit A. W. N. 1907, 207; 4 A. L. J. 683.	3
—order under—s. 244—decree a nullity. (S. A. 783 of 1907) <i>Jivraj v. Patilboan</i>	9 (IV)
—interlocutory orders in probate proceedings. (F. A. 78 of 1908). <i>Bai Mahaluxmi v. Someshwer</i>	9 (IV)
—Limitation—Delay—advice of legal adviser. 1907 L. T. 828. T. R. 16.	1 (III)
—Order dismissing appeal—pleader refused adjournment. (S. A. 734 of 1907) <i>Babu v. Dhondur</i>	10(IV)
—Appellate Court—power of—alternative relief—contending de- fendants—Practice. 85 Cal. 538	419
—Time spent in review. 3 P. W. R. 239.	287

- Jurisdiction—Mortgage—suit. (Appeal from Order 12 of 1908) 12(IV)
- Allegations—Decision on these allegations—New case in appeal not allowed. 10 Bom. L. R. 768 496.
- Appellate Court*—Power to make co defendants liable upon appeal by a Defendant—Mortgage suit. 12 C. W. N. 720. ... 302.
- Arbitration*—Award set aside by Munsiff—Decision in the merits—Appeal—Award restored by the District Judge—Jurisdiction. 3 M. L. T. 315 246.
- Arbitration Act*—Oral submission—Necessity for submission in writing—Award on oral submission—Validity—C. P. Code, sec. 375—Adjustment of suit—Award on oral submission not an adjustment of suit. 10 Bom. L. R. 366 302.
- (*IX of 1899*)—Pendency of suit—Proceeding with reference—Award before suit disposed of—Effect. 1 Sind L. R. 256... 554.
- Secs. 11, 14 and 15*—Order enforced as a decree—Appeal not allowed—Revisional powers of High Court. 1 Sind L. R. 86... 139.
- (*10 of 1899*)—*S. 19*—Application to stay proceedings pending arbitration. 35 Calc. 199 246.
- Arms Act*—District Magistrate if a Court. 4 Nag. L. R. 134. ... CIX.
- (*IX of 1878*), *sec. 13*—Arms—Going armed without a licence—Acquittal—Appeal against disposal of confiscated arm. 9 P. L. R. 445 LXXXV.
- S. 13, 16*.—Possession of a gun—receiving presents. Bur. Cr. R. 9-11-07=7 Cr. L. J. 245 LVII.
- (*XI of 1878*) *ss. 14 and 19 (6)*—Temporary possession of a gun. 35 Calc. 219=7 C. L. J. 242 LVII.
- Ss. 19 (e), (f)*—No sanction to prosecute illegal—Possession of fire arms previous—Sanction institution of proceedings—Charge Criminal Procedure Code, secs. 190, 195, 535, 587, (b). 4 L. B. R. = 8 Crim. L. J. R. 65 CI.
- 1878. *S. 22*—Scope of—Delivery of gun to servant. 4, Nag. L. R. 78... .. XXXIII.
- Arrears of rent*—Civil Court decree—Distraint by landlord subsequent to decree illegal—The doctrine of merger. 3 M. L. T. 22... 76
- Assignment*.—Right of a person to challenge. 12 C. W. N. 393 ... 191
- Assignment of debt*—Plea of want of consideration—Debtor not prejudiced by the assignment. 1 Sind L. R. 60 139
- Assignment*—By one co-owner—Other co owner not objecting—Assignment of whole debt due to the shop—Validity of. 3 M. L. T. 294 246

- Attachment, Effect of*—Creates legal rights though it creates no charge having priority over other creditors—Action maintainable for wilful infraction of such right without jurisdiction. 30 Mad., 413, 2 M. L. T. 365 ... 4
- Attachment*—Provident Fund of Corporation of Calcutta Subscriptions—Calcutta Funds Act (IX of 1897) ss. 7 (4) 4, 6—Provident Funds Act (amendment) Act (IV of 1903), sec. 2—"compulsory deposits"...Trustees. 35 Cal 641 ... 419
- Attachment for more than the amount due—Validity of. 3 L. T. 29 ... 83
- Attorney*—Attorney's final examination for admission of—Rules and orders of the High Court Rules, 116, 117, 118 and 132, Board of Examiners—Jurisdiction Certificate—Solicitors Act, 1877, 40 and 41 Vietch 25), s. 9—Special Bench. 35 Oalc. 915=12 C. W. N. 873 ... 419, 554
- Attorney client*—Bill of costs. 12 C. W. N. 1102 ... 510
- Award*—Application to file, order refusing—Civil Procedure Code, sec. 525. 7 Cal. L. J. 486 ... 302
- Disagreement of both parties sufficient to render it ineffectual. 1 Sind. L. R. 236 ... 342
- Award relating to property outside jurisdiction—Duty of Executing Court. 1 Sind. L. R. 93 ... 156
- Babuana Grant*—Partition—Ancestral property—Babuana Grant—Original grantee's power to dispose of by will. Rights of junior members. 35 Calc. 823=8 C. L. J. 124 ... 460, 510
- Baluch Mahomedans, Muhammadan Law*—Evidence to prove custom at variance with it inadmissible—Bengal N. W. P. and Ussam Civil Courts Act (XII of 1887) sec. 37—Baluchi Muhammadan law in regard to succession—Daughters entitled to inherit—Relinquishment ... 4
- Bailment*—Liability of store-keeper—Theft from pockets of customer. 10 L. R. A. 314. ... 5
- Bengal Civil Courts Act, No. XIII of 1887, s. 37*—Muhammadan Law—Evidence not admissible to prove custom at variance with the Muhammadan Law. A. W. N. 1908, 7... 79
- Bengal Disorderly House Act (III of 1906), s. 2*—Dancing girls—Singing obscene songs—Brothel—Habitual prostitution. 6 C. L. J. 710... 1
- Bengal Embankment act (II. B. C. of 1882) sec. 76*—Offence under—adding to embankment, sec. 76 12 C. W. N. 344... 140
- Bengal Estate Partition Act (Bengal Act V of 1897), ss. 29, 25. 35*

Calo. 575	...	...	...	...	446.
<i>Bengal Excise and Licensing Act (VI B. C. of 1178), sec. 75</i> —Interpretation of—Confiscation in the owner's absence.	12 C. W. N.	189...	...	...	XIII
<i>Bengal Land Registration Act (VII of 1876 B. C)</i> —Action of revenue authorities—in competency of Civil Court to direct such action.	10 Bom. L. R. 262=18 M. L. J. 125	...	...	...	247
— <i>ss. 59, 63</i> —Competent Court, meaning of in sec. 59—Jurisdiction—Revision by High Court...	...	...	...	...
<i>Bengal Land Registration Act (Bengal Act VII of 1876) S. 78</i> Milkot property—Entry in register of revenue-free estates—Regulation II of 1819, 35 Cal. 747.	...	...	...	...	461
—(VII of 1876) <i>ss. 78</i> . Registration during pendency of suit.	8 Cal. L. J. 299.	...	...	...	510
<i>Bengal Municipal Act ss. 34–37</i> —Contract in violation of the Bengal Municipal Act—Commissioner power of under Bengal Municipal Act.	—Ultra vires—Frاند, 34 Cal. 1030; 12 C. W. N. 30.	...	...	...	55
—(Bengal Act III of 1884) <i>ss. 85, cl. (a) 87 cl. (d) 113, 114</i> and 116, Jurisdiction of the Civil Court to question assessment, "circumstances and property within the municipality" meaning of.	35 Cal. 859; 12 C. W. N. 709; 7 C. L. J.	...	...	...	372,510
<i>Bengal Regulation III of 1891</i> —Jham cultivation—Legislation to extinguish right to carry on such cultivation outside settled estate—compensation—ones to prove that statute applies statement of facts in preamble of statute—Value—Question of fact or law concurrent bindings—Evidence sec. 13. Transactions inter alios.	12 C. W. N. 1095.	...	...	...	511
<i>Bengal Tenancy Act, (VIII B. C. of 1885) ss. 1 and 12</i> —Release by co-sharer, if transfer stamp—Registration—non payment of landlord's fee if invalidates Transfer—Bengal Tenancy Act. (Validation) Act s. 1. Breach of covenant cessor of liability	12 C. W. N. 476.	...	...	...	191
— <i>Sa. 16, 18, 79, 179</i> —Mokarari—meaning of—Abwab Rent	12, C. W. N. 175.	...	...	...	55
— <i>S. 21</i> —ejectment suit for—Cultivating raiyat—Leases construction of—occupancy right, accrues in what land	7. Cal. L. J. 475	...	...	...	303
— <i>s. 22 'or otherwise.'</i>	8 Cal. L. J. 324.	...	...	...	512
— <i>ss. 30, 37, 50, 52, 115</i> Resjudicat.—Presumption as to status from uniform payment of rent, record of rights published—suit for increase of rent, for increased area—Civil Procedure Code.—Sec. 13. Res. Judicata. (12 C. W. N. 904)	...	...	...	...	420

—Sa. 54 (3) 61, 67 Interest—Arrear of rent—Tender—Effect of valid tender kept good but improperly refused—Deposit in court omission to make—Landlord and tenant. 35 Cal. 54. ...	248
—s. 87 not exhaustive—Abandonment, a question of intention—Mortgage of non-transferable holding—Mortgage auction—Purchaser—Mortgagor, interest of—Ejectment of purchaser by landlord—Re-entry—Execution sale—Voluntary abandonment. 7 Cal. L. J. 73 ...	140
—Sec. 106—Suit between rival properties—Scope of suit—Question possession or title—Limitation Act, s. 22—Substitution of in place—supposed legal representative—New Defendant. 12 C. W. N. 8 ...	5
—(VIII of 1885) sec. 165—Landlord parting with his interest after the accrual of rent, if has a first charge—Decree, character of Putai Regulation (VIII of 1819) sec. B. cl. (4)—Durpatnidar's lien if superior to landlord's charge, 7 Cal. L. J. 652 ...	353
—Sec. 184 (l)—Plea of Limitation not set up—Duty of Court to dismiss suit ...	95
<i>Benamidar</i> .—Suit for sale or a mortgage. Decree giving benamidar a right to redeem. Right to redeem not availed of—Subsequent suit for redemption by alleged beneficial owner barred. A.W.N. 1907, 2724 A. L. J. 684=30. All. 30 ...	42,46
—Mortgage—Conveyance without consideration. 12. C. W. N.409 ...	191
—Transactions—Alienation to defraud creditors—Fraud not carried into effect suit—against benamidar for sale of property conveyed nominally. 3. M. L. T. 244 ...	246
<i>Benar</i> .—Application of mitakshara. 4.Nag. L. R. 31 ...	276
<i>Benar Land Revenue Code</i> . S. 208—Right of prevention 3. Nag. L. R. 135. ...	56
<i>Birt</i> .—Right to realise—Birt is immoveable property—Mortgage of Birt—Mrtgage's right in Birt—Suit for redemption of mortgage and for possession of birt—Extinguishment of right to realized Birt—Indian Limitation Act XI of 1877, S. 28 and articles 142 and 144 of its second schedule. C, P. Code. SS. 33 and 42 3. P. W.R. 828	343
<i>Boiler Inspection Act</i> , (2 of 1891) Sec. 29(1)(B) meaning of "in direct and immediate management and charge." IV. N. L. R. 95. LXXIII	
<i>Bombay City Municipal Act</i> (Bom. Act III of 1888), sec. 33—Election of councillor—Validity of, appellant's right of question election "Election" meaning of—Chief Judge of Small Cause Court	

- has sole jurisdiction to try suits relating to election petitions—
Jurisdiction of High Court—Civil Procedure Code, S. II. 31 Bom.
604 96
- Secs. 3 (a) and 504*—Drains—Man-holes—Drains above the
surface of ground driven through private property—Compensation
—Award—Chief Judge of the Bombay Small Cause Court. 9 B.
L. R. 1321 56
- S. 354*—Municipal Commissioner—Power to remove objec-
tionable structures—Exercise of the power “appear,” interpreta-
tion of—Danger—Kind of contemplated by the section—Discretion
vested in the Commissioner—Courts interference with the
discretion—Commissioner; can act through agent—Right of the
party to be heard in answer to his notice—Injunction to restrain
Commissioner from putting down a building 10 Bom. L. R. 821... 512
- Bombay City Police Act (Bombay Act IV of 1902) sec. 120*—“Other-
wise”—Interpretation—Soliciting for the purpose of prostitution.
10 Bom. L. R. 92 XXII
- Bombay Civil Courts Act (Act XIV of 1869, amended by Bombay
Act 1 of 1900, s. 2), sec. 16*—Probate and Administration Act,
secs. 86, 51, 52—District Judge—Assistant Judge deciding applica-
tions where in the subject-matter does not exceed Rs 5000 in value
appeal to District Court—No direct appeal to High Court—Po-
wer of local legislature to amend an act passed by Supreme Legis-
lative Council—India Council's Act (55 and 56 Vic. c. 14) s. 5. 10
Bom. L. R. 924 555
- Bombay District Municipal Act (3 of 1901) sec. 54*—Imperative
duty of the Corporation—Dustbins nuisance—Powers of Court
to interfere with acts of a corporation. 1 Sind. L. R. 228 ... 343
- (*III of 1901*) *secs. 122 and 161*—Prosecution launched
without sanction of the Municipality, legality of—Offence falling
under two clauses, applicability of. 1 Sind L. R. 188... .. LXXV
- Sec. 160*—Municipal acquisition of land—Proposal to
acquire—Acceptance of proposal—Difference as to price—Completed
contract—The price can be fixed by the Court in cases of difference.
10 Bom. L. R. 617... .. 421
- Bombay Gambling Act (IV of 1887) sec. 6*—Enquiry by the Magis-
trate—Money found on the person of accused—Confiscation of.
1 Sind L. R. Cr. 64 XLV
- Bombay Village Police Act (VIII of 1867), ss. 6, 14*—Police Patel
—Judicial proceedings before the Police Patel—District Magistrate's

- power to transfer the case to another Court—Transfer of case—
 High Court—Superintendence—Letters patent, *cls.* 26, 27. 10 Bom.
 L. R. 630... LXXXV
- Boundaries**—Demarcation of village boundaries accepted by settle-
 ment authorities and agreed to by defendants, suit by Government
 to impugn correctness of—Secretary of State for India in Council
 Suit for possession of land by. 11 O. C. 30... 250
- Breach of**—Maintainability of suit. 52 S. J. 156; 1908, W. N. 8 ... (III) 9
- Budhists**—Succession—Child of divorced—Couple. 14 Bur. L. R. 236... 518
- Bundelkhand Encumbered Estates Act (1 of 1903), secs. 2 and 12**—
 Joint decree—Execution of decree—Effect of some out of several
 joint judgment-debtors taking advantage of the Act. 30 All. 141 =
 A. W. N. 1903, p. 43 ... 142; 304
- Burden of proof**—Mortgage bond—Denial of execution and passing
 of consideration by third party. 6 C. L. J. 659... 87
- Purchaser from a Hindu woman—Duty of. 12 C. W. N.
 393 ... 162
- Suit for a declaration that an alleged portion is invalid. A.
 W. N. P. 79. ... 192
- Burma Civil Courts**—Law relating to gifts. 13 Bur. L. R. 342 ... 6
- Burma Ferries Act, s. 25**—Ferryboat—Meaning of. 14 Bur. L. R. 22 193
- Burma Gambling Act, (1897), sec. 6**—Search—Entry—Presumption
 from discovery of the tenants of—gaming common—gaming house
 list of things—Seized in search—Criminal Procedure Code, 1898
 s. 103. 4 L. B. R. 134 = 7 Crim. L. J. 411... LXXIII
- Burma Municipal Act (3 of 1898) S. 46 (1, (A) ss. 68, 69**—Meaning
 of 'Tram lines whether' buildings and lands, 14 Bur. L. R. 26 ... 193
- S. 142 (c)—Pawn broker, 13. Bur. L. R. 269 ... 1
- Burma Lower Village Act 1889, S. 9 (2)**—Refusal or neglect to
 comply with requisition of headman—Order of head man—Failure
 to pay revenue demanded criminal offence—Burma Land Revenue
 Act 1876, 4 L. B. R. 150 = 7 Cr. L. J. 450... LXXXVI
- S. 13 A. Pwe—Music and dancing—awyein—Pwe. 1 Cr. L. R. 49 143
- Burmese Budhists**—Succession—Division among nieces—Whether per-
 capita or per stirpes. 13 Bom. L. R. 374. ... 193
- Burmese Law**—Right of surviving parent over joint property, 13.
 Bur. L. R. 334 ... 6
- Adoption—Essentials—Proof of, 14, Bur. L. L. 15 ... 193
- Pre-emption. 14, Burma L. R. 41. ... 304
- Customs Act, (13 of 1889) S. 13**—Supply—Intoxicating drug—

- Supply of liquor to a European Soldier—Servant of a soldier buying liquor with soldier's money for soldier's use. 31 Bom 523... II
- Cantonment Code, (1899) sec. 66 (1)*—Carrying men exposed to public view—Servant's offence—Master's liability. 10 Bom. L. R. 1052 CXXV
- Calcutta municipal Act, (B. C. III of 1899) Ss. 198, 466 and Sch II Rules (1), (2) and (7)*—License Liability of lime-tyade License to take out separate licence to store lime. 34 Cal. 973 ... 7
- Calcutta Municipal Act (3 of 1899) Ss. 372, 383, 449.*—Corrograted iron shed if a building—Notice when a condition precedent. 7. C. L. J. 243... ..
- (*III B. C. of 1899*) *Ss. 408, 419, and 575*,—Bustee improvement. Failure to make road as in standard plan of bustee—Bustee ceasing to be so. 12 C. W. N. 72 XIII
- (*Ben. of 1899*) *Ss. 408, 419, 574 and 631.*—Prosecution—Limitation—Bustee improvement—Notice—Date of offence—Subsequent notice under s. 419. Extension of time by corporation. 34. Cal. 909... .. II
- Oause of Action.*—Survival of—Law as to. 3 P. W. R. 21. ... 305
- Central Provinces Tenancy Act. Sec. 200.*—Gochur lands cannot be classed in the same category as common lands. 18 C. L. J. 116. 462
- (*XI of 1898*) *Ss. 45, 46, 47, and 55 Act IX of 1883 as amended by Act XVII of 1889. S 43.*—Ejectment—Suit for—Jurisdiction of Civil Court—Limited in erect—Limitation. I. L. R. 35 Calc. 470. 344
- Central Provinces.*—Malikana Buza. 3 Nag. L. R. 162. 75
- O.P. Land Revenue Act 1881.*—Malikbagurja—Mulagujar—Estate of. 4 Nag. L. R. 2. 194
- C. P. Rent Law (IX of 1883) Sec. 43 C. P. Tenancy Act. 1891 S. 45.*—Transfer of part of. 7 C. L. J. 499.—12 C. W. N. 636. 304
- C.P. Tenancy.*—Devolution of—Hindu Law—Applicability of. 4 Nag. L. R. 9. 194
- What constitutes a tenancy. 3. Nag. L. R. 186. 122
- 1898—Remedies of landlord—Recovering rent. 3. N.L.R. 164. 56
- S. 41 (4)*—Meaning of "devolves"—Divisibility of holding. 3. Nag. L. R. 182. 97
- S. 41.*—Power of avoiding a transfer when exerciseable. 4. Nag. L. R. 45. 250
- S. 45.*—Scope of. 3. Nag. L. R. 159. 7
- Cess Act. (Beng. IX of 1890) Ss. 415-6.*—Cess assessment of annual value of land—Rent. 35 Calc. 82. 251.

- Champerly*—Assignment—Validity if may be questioned by third parties—Consideration made payable upon success of suit—Gambling in litigation 12. C. W. N. 393=10 Bom. L. R.=7 Cal. C. J. 385=5. All. L. J. ... 194
- Champerly and maintenance*.—Agreement opposed to public policy—Inadequacy of price for property to be recovered by suit—35 Cal. 421. 305
- Charge*.—Defect in charge, omission to frame—conviction, validity of.—Embezzlement—Penal Code Secs 406 and 116. 12. C. W. N. 547. LVII
- Charity*.—Will—Gift—Charitable purpose—Unnecessary and useless object—Cy—pres doctrine.—Trust incapable of being carried out at testator's Death—Diversion of funds to useful and beneficial purpose—Power of Court. 32. Bom. 214. ... 805
- Charities*.—52. S. J. 622, 125. L. T. 239. ... III 19
- Gift to trustee to apply to purposes he thinks fit. 52. S. J. 622, 125, L. T. 236. ... III 17
- Chowkidari Act (VI B. C. of 1878) Sec. 51*.—Presumption of Chakran land—Lessee from Chokidar rights of. 12. C. W. N. 161.... 97
- Chowkidari Chakaran Act (VI of 1870) S. 51*.—Chowkidari Chakaran lands—Resumption sublease before Resumption effect of zemindari Chowkidar—Collector—Lease by. 7 C. L. J. 85. ... 143
- Chowkidari Chakran Lands—The village Chowkidar Act. (Beng.—VI of 1870) s. 51*.—Construction of—Right created by the Chowkidar effect of. 35 Cal 185. ... 252
- Patnio—Construction zemindari—Patnidar—Lands held by Chowkidar revert to whom on redemption. 7. C. L. J. 593 ... 345
- Chota Nagpur Encumbered Estate Act (VI of 1876 B. C.) Sec. 3 (3) (c)*.—Contract by person subsequently declared to be owner of Encumbered Estate—Subsequent withdrawal of encumbrance—Revival of validity.—Bearing of pending suits—'Debts and liabilities'—meaning of. 7. C. L. J. 578.... 345
- Civil Procedure Code**.—Misjoinder of parties—Multifariousness—Suit by heir to recover property from co-heir and transferees from him—Property situate in different districts—Compromise of part of claim—Jurisdiction. A. W. N. 1908, 235. ... 555
- Res-judicata—New Rulings. A.W.N. 1901, 68=5.A.L.J. 117. 195
- S. 13—Res-judicata—Cross appeals from one decree—Appeal from one of the appellate decrees but not from the other. A.W.N. 1908. 211. ... 463
- S. 13.—Res-judicata—Question of right to receive a recarrying payment—Civil and Revenue Courts—Revenue Court decid-

Index.

ing a question of title. A. W. N. 1908, 192.	423
——— <i>S. 13.</i> —Competency of Court to try the previous and the subsequent suit—Concurrent jurisdiction. 35 Calc. 353=7 C.L.J.470.	306
——— <i>S. 13.</i> —Res-Judicata—Finding essential to the decision of the Court through not embodied in its decree. A. W. N. 1908, 41=5. A. L. J. 48... ..	143
——— <i>S. 13.</i> —Res-judicata—Matter directly and substantially in issue. 7, C. L. J. 251.	252
——— <i>S. 13. Expl. II.</i> —Res-judicata—Property not included in the former suit—Right as heir decided in the former suit with respect to other property—The decision does not bar the second suit. 32. Bom. 315... ..	345
——— <i>S. 13.</i> —Decision in previous suit binding as res-judicata between the co-defendants if the matter in the subsequent suit actively contested at previous trial. 30. Mad. 447.... ..	48
——— <i>S. 13.</i> —Court of jurisdiction competent—Revenue Court—Dismissal of suit for enforcement of acceptance of patta—No bar to a suit for rent on the basis of a tender of proper patta—Madras Act—Rent Recovery Act. Ss. 9-10. 17, M. L. J. 601.	98
——— <i>S. 13. Expl. II.</i> —Successive purchase of the same land at two execution sales—Suit to set aside one such sale—Purchaser's defence—Whether his bound to set up title acquired at the other sale—Ground of defence which "ought to" have been taken. 12. C.W.N. 292.	98
——— <i>S. 13. Expl II.</i> —Res Judicata—Matter which might and ought to have been made a ground of defence in a former suit. A.W N. 1907. 275=4. A. L. J. 675	9
——— <i>Ss. 13-43.</i> —Causes of action—Whether distinct. (S. A. 37 of 1907); Mir Abas Ali, v. Maryambibi.	IV 4
———(11. 12. Vic. C. 21) Ss. 27, 26.—Jurisdiction of the Insolvent Court outside the Bombay Presidency—Person in possession of insolvent's property can be directed to hand it over to the official Assignee. 10. Bom. L. R. 77.	118
——— <i>S. 13.</i> —Res-judicata—Matter directly and substantially in issue—Finally decided—Claiming under the same title—Same parties—Suit by reversioners against widow for declaration that alienation by her in favour of her daughters was invalid—Daughters not made parties—Decision not binding on daughters, P. L. R. 1907, No. 76	8
——— <i>S. 13.</i> —Deccan Agriculturists' Relief Act, S. 30—Suit on a	

every note—Issue as to payment by instalments—Finding in negative execution of the Deccan Agriculturist's Relief Act District—Application for instalments—Res-judicata, 32 Bom.	514
... ..	
Sa. 13 and 206—Execution of decree—Interpretation of —Reference to judgment and award—Amendment of decree judicata—Jagir—Attachment of—Objection—Pensions Act (of 1871) S. II—Jagir income is exempt from attach- ment under S. II of the Pension Act, 1871. P. L. R. 1907 ...	8
120—Jurisdiction of a Court to entertain a suit, 5 A.L.J. 88	98
120—5 A. L. J. 88=1908, A. W. N., P. 46 ...	118
127—Court has power to order right persons to be sub- stituted as plaintiffs even when original plaintiff had no right to Mad. 419=2 M. L. J. 497 ...	9, 57
128—Misjoinder of parties and causes of action—"In res- pect of the same matter"—Meaning of—Practice, 31 Bom. 516...	10
132—Parties—Striking off of defendant after first hearing R. 96 ...	143
132—Non-joinder of Parties—Opportunity to be given to 1 Sind L. R. 90 ...	143
136, 63—Appearance through a pleader not duly instruc- ted—Proceedings ex parte, 1 Sind L. R. 115 ...	144
145—Misjoinder of parties and causes of action—Mort- gage 17 M. L. J. 515 ...	10
153—Specific Relief Act, S. 42—Amendment of plaint— by suit—Plaintiff omitting to pray for further relief, 9 15 ...	144
103, 311, 588 and 647—Appeal from an order refusing to set aside the order dismissing an application for setting aside default, 10 O. C. 353 ...	144
103, 310 and 588—Appeal—Order refusing to restore an order under S. 310 which had been dismissed for default of 29 All. 596 ...	10
108, 560 and 582—Power to set aside—Ex-parte decree if filed, 30 Mad. 535 ...	99
113—Written statement filed late by one day—Discretion exercised—Revision—Provincial Small Causes Courts 1 Sind L. R. 131 ...	145
132, 139, 584—Documents not mentioned in list filed —Discretion of Court in excluding, 12 C. W. N. 312 ...	145

—S. 157—Scope of—Sa. 102, 158, 13 Bur. L. R. 333	11
—S. 158—Holiday—Hearing fixed with the consent of parties	
—Failure of plaintiff to attend, P. L. R. 1907, 92	99
—Sa. 206, 623—Judgment—Clerical errors—Review not necessary, 9 P. L. R. 104	145
—S. 209 cl. (b)—Instalment decree default in first instalment	
—Amount payable at once, 1 Sind L. R. 18	45
—S. 211—Meane profits—Khamar land—Interest, 12 C. W. N. 285	99
—Sa. 223, 649—Court, ceasing to have territorial jurisdiction subsequent to decree—Effect of on execution application to that Court, 2 M. L. J. 466	57
—Sa. 232, 233—Transfer of money—Decree—Execution proceeding by transferee—Transfer of Property Act, Sa. 67, 99, 3 M. L. T. 107	99
—S. 232 cl. (b)—Decree for money—Assignment in writing—Transfer to one of the judgment-debtors—Execution proceedings by the transferee—Contribution suit, 10 Bom. L. R. 89	100
—S. 232—Sale of property the subject of a decree right to execute the decree, 4 A. L. J. 759 = A. W. N. 1907, 280	11
—Sa. 232, 368—Application by transferee decree-holder to bring in legal representative—Whether a step in aid of execution—Limitation, 3 M. L. T. 21	57
—S. 244—No bar—Suit by purchaser for compensation for trespass by decree-holder, judgment-debtor and others, 17 M. L. J. 543	11
—Sa. 244, 278—Personal decree against Shebait—Execution against debutter property—Suit to declare property—Debutter if maintainable, 12 C. W. N. 308	146
—Sa. 244, 278—Decree—Personal against Shebait—Claim to attached property on behalf of idol if may be tried in execution proceeding, 12 C. W. N.	146
—S. 244—Decree for permanent injunction—Lands purchased from decree holder by another person—Vendee bringing a fresh suit for injunction, 10 Bom. L. R. 90	100
—S. 244—Joint tort feasons—Sale of a paramba in execution—Injury done to property by the judgment-debtor and decree-holder after the confirmation of sale—Suit by purchaser for damages—Maintainability of, 3 M. L. T. 971	101
—S. 244—Execution of decree—Resolution—Fresh suit—Plaint treated as application for execution of decree, 9 P. L. R. 57	146

Index.

17

—S. 244—Execution of decree—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased, A. W. N. 1908, 12	58
—Ss. 244, 310 A—Appeal lies under S. 244 against an order rejecting an application under S. 310 A by a transferee of judgment debtor after Court—Sale, 30 Mad. 507	53
—Ss. 244 and 318—Right to sue for possession—Auction purchaser, 3 A. L. J. 20	146
—Ss. 244, 318—Judgment-debtor—Objector, 6 C. L. J. 749	100
—Ss. 244, 319—No bar—Delivery of symbolical possession—Wrong delivery—Not nullity—No bar to separate suit, 17 M. L. J. 598	101
—Ss. 252, 546, 582, 583—Execution of decree—Proceedings against surety by process of execution, P. L. R. 1907	101
—S. 257 A—Agreement extinguishing the decretal debt—Validity of, 1 Sind L. R. 140	147
—S. 257 A—Contract Act Ss. 2 cl. (g) 23 and 24—Mortgage bond—Consideration made up of several items—Decretal debt of one of the items—Sanction of the Court not obtained—Effect on the bond, 31 Bom. 552	12
—S. 257 (a)—Agreement of satisfaction of judgment debt—Contract Act, S. 2 (d) and 27—Interpretation of statute, 2 P. W. R. 449	12
—S. 258—Scope of—If it applies to mortgage decrees—Quere, 12 C. W. N. 282	101
—S. 258—Right of suit—Judgment-creditor receiving payment and not certifying under S. 258 of the Code of Civil Procedure liable in damages though he was not executed and received the decree amount, 30. Mad. 545	101
—S. 258—Scope of, 30 Mad. 537	102
—S. 258—Decree-holder paid out of Court—Satisfaction not entered—Suit by judgment-debtor to recover amount—Cause of action—Damages, 3 M. L. T. 15	58
—S. 258—"Judgment-debtor"—Meaning of, 2 M. L. T. 466	57
—S. 258—Scope of—Not confined to many decrees, 8 P. L. R. 1907, No. 82	12
—S. 258—Adjustment not certified—Plea in bar of execution, 7 M. L. J.	12
—Ss. 266, 617—Attachment—Sale—Country Liquor—Collector's permission—Abkari Act (Bom Act V of 1878) S. 16—Refer	

ence to High Court—Action by a third person not a party to the suit, 10 Bom. L. R. 13	102
——— <i>S. 268</i> —Invalid attachment, P. L. R. 1907, No. 79 ...	13
——— <i>S. 283</i> —Suit under it—Stamp on the plaint—Court Fees Act (VII of 1870) Sch. II art. 17, clause 1, 10 Bom. L. R. 1 ...	102
——— <i>Ss. 311, 312 and 588 (16)</i> —Execution of decree—Sale—Application to set aside sale dismissed for default—Second application rejected—Order passed on second application not appealable, 9 Pun. L. R. 52	147
——— <i>Ss. 311, 312 and 313</i> —Execution of decree—Sale in execution—Objection subsequently taken by the judgment-debtor that the property sold was not legally saleable—Estopped, 29 All. 612	13
——— <i>S. 316</i> —Execution of decree—Sale in execution—Decree reversed before confirmation of sale, 29 All. 591	13
——— <i>S. 325 A</i> —Disqualification to alienate is personal, 3 Nag. L. R. 171	59
——— <i>S. 331</i> —Resistance or obstruction—Decree for partition—Decree for possession—Partition Act, S. 4, 7 C. L. J. 98 ...	147
——— <i>Ss. 331, 332</i> —Decree for delivery of possession of immovable property—Obstruction to delivery by third party in good faith—His remedy, 11 C. W. N. 115	13
——— <i>S. 357</i> —Scope of, 13 Bur. L. R. 321	13
——— <i>S. 362</i> —Parties—Death of sole appellant—All representatives not brought upon the record abatement of appeal, A. W. N. 1908, 41 = 5 All. L. J. 62	147
——— <i>S. 365</i> —Death of sole plaintiff—Claim of one of the defendants to continue the suit as plaintiff—Abatement of suit, 9 A. W. N. 1908, 6	59
——— <i>S. 368</i> —Suit institution of in a Civil Court—Death of defendant before presentation of plaint—Court's power to substitute his representatives—Jurisdiction, 3 M. L. T. 12	59
——— <i>Sec. 373</i> —Giving up one of the reliefs at the hearing to avoid misjoinder of causes action—Effect of, 1 Sind L. R. 29 ...	148
——— <i>S. 375</i> —Incorporation in compromise—Decree of terms which are not unlawful though outside the scop of—Suit cannot be objected to in execution, 30 Mad. 421	14
——— <i>S. 375</i> —'Lawful agreement or compromise' relates to the suit—Compromise in a suit for money by which the agreed amount is charged on property is lawful and relief by way of charge 'relates to the suit, 30 Mad. 478	60

——— <i>Ss. 380, 410</i> —Pauper plaintiff if can be required to furnish security for Defendants—Costs. 12 C. W. N. 163 ...	...102
——— <i>S. 396</i> —Partition suit—Preliminary—Decree—Execution of decree—Proceedings in suit—Limitation—Res-judicata. P. L. R. 1907, No. 86 ...	103
——— <i>Ss. 407, 592</i> —Pauper appeal—Applications under sec. 592 to be decided under the rules in chapter XXVI—No leave to appeal in forma pauperis when at date of suit there is subsisting an agreement falling under section 407 (d). 30 Mad. 547 ...	103
——— <i>S. 437</i> —Suit against mutwallis—Suit for rent—Parties—minors—Representation. 12 C. W. N. 160 ...	103
——— <i>S. 444</i> —Guardian ad-litem—Duty of Court as regards appointment of a guardian ad-litem. 29 All. 675 ...	60
——— <i>Ss. 456 and 457</i> —Minor suit brought by to set aside a dinner passed against him—Guardian ad-litem—Appointment of conditions necessary for—Proper representation of minor in a suit to be done with great care—Affidavit that the guardian has no interest adverse to the minors—Certificated guardian, mortgage executed by, without the sanction of the Court not void ab initio. 10 O. C. 321 ...	60
——— <i>S. 457</i> —Guardian ad-litem—Appointment of married women whose husband is alive. 29 All. 728=4 A. L. J. 628...	4, 104
——— <i>S. 503</i> —Receiver when to be appointed. 1 Sind. L. R. 121	148
——— <i>S. 506</i> —Arbitration—Reference made orally, but reduced to writing by the Court—Irregularity. A. W. N. 1907, 273 ...	14
——— <i>S. 508</i> —Arbitration of reference not fixing a period within which the award is to be made appeal. A. W. N. 1908, 59 ...	148
——— <i>Sec. 522</i> —Arbitration—Award—Decree on award made without allowing time to file objections—Appeal. 29 All. 584 ...	14
——— <i>Ss. 522, 526</i> —Private arbitration—Award made a rule of Court—Appeal. A. W. N. 1908, 54...	148
——— <i>S. 525, 526</i> —Appeal, right of—Objection to award given up—New case made out. 1 Sind. L. R. 150 ...	149
——— <i>S. 539</i> —Public charitable trust—Breach—Suit—Jurisdiction—Court in which suit should be brought. 10 Bom. L. R. 87 ...	104
——— <i>S. 544</i> —Ground common to all the defendants—Decree against all defendants may be reversed on appeal by one against the whole decree when such decree has proceeded on a ground common to all. 30 Mad. 470...	61
——— <i>Ss. 545, 546</i> —Execution of decree—Stay of execution—Appeal—Sale of immoveable property in execution of—Decree for	

money—Appellate Court, power of—Stay sale—Practice. 34 Cal. 1037	61
—S. 549—Security for costs—Non-compliance with order for security—Order rejecting appeal—No appeal from such order. A. W. N. 1908, 53=5 A. L. J. 109	149
—S. 558—Appeal dismissed in default at 11-30 A. M.—Sufficient cause for re-admission of an appeal. 2 P. W. R. 413	15
—S. 559—Security for costs—Delay—Appellant appealing in forma pauperes. 17 M. L. J. 283	104
—Sec. 559.—Respondent getting a decree against a co-respondent. 4. A. L. J. 772.	15
—S. 562—Remand order, validity of—Appellant not allowed to challenge the validity of the decision on which remand made. 10 O. C. 350	150
—S. 562—Court fee—Suit for partition—Remand—Appeal. A. W. N. 1908, 40...	105
—Sec. 562, 566—Contract made on behalf of a minor—Joint Hindu family—Remand. 5 A. L. J. 14	150
—Sec. 562—Powers of Commissioner—O. P. Code, sec. 397, 398—Remand—Genuineness of books. (Appeal No. 11 of 1908 from order)...	12
—S. 562—Remand—Appeal from order of remand after decision of the suit in accordance therewith. 29 All. 659...	62
—S. 566—Remand—Possession suit for—Lower Appellate Court—Power of a remand. 34 Cal. 996	62
—S. 566—Remand—Return to remand to be made by the Court originally seized of the case—Jurisdiction. 29 All. 660	62
—S. 578—Procedure—Irregularity—Disposal of a suit on a Sundry. A. W. N. 1908, 43...	150
—S. 582—Death of plaintiff—Respondent pending appeal—Substitution of legal representatives, Court's power to determine which person is the true legal representative. 1 Sind L. R. 41...	150
—S. 584—Erroneous exclusion of certified copies of public documents produced in a suit though not mentioned in the list. Filed with the plaint. 12 C. W. N. 311	150
—S. 598 and 407 (d)—Leave to appeal inform a pauperes—Circumstances to be considered. 3 M. L. T. 11...	63
—S. 598—Appeal to His Majesty in Council—Civil Procedure Code, s. 562—Appeal from order of—Remand not usually admissible. A. W. N. 1907, 291	63
—Ss. 598 and 598—Leave to appeal to His Majesty in Coun-	

oil—Application for “substantial question of law”—Meaning of—Questions of general importance or of general interest: 10 O. C. 308	63
———S. 596.—Appeal to His Majesty in council—Substantial question of law—What is a question of fact.—Leave to appeal refused. A. W. N. 1903; 7.... ..	63
———S. 622.—Revision—no distinct finding on issue. (C. Rev. application 54 of 1908).	11
———Sec. 622.—Order refusing to return plaint—Interference in revision: 1, Sind. L. R. 120.	151
———S. 623.—Review—Error of law—Effect of later ruling of Chief Court. P. L. R. 1907, No. 97.	105
———S. 624.—Review of successor of judge—Judgment order—Decree—Order dismissing appeal in—Default. P. L. R. 1907, No. 107.	105
———Secs. 625, 623, 584, 591.—Appeals from final decree—Objections to be taken, limit to—Review granted for “any other sufficient reason.” No—appeal 17. M. L. J. 603.	105
<i>Civil and Revenue Courts</i> —Suit to set aside a lease of co parcenery property. A. W. N. 1308, 77.	326
<i>Civil or Revenue Court</i> —Hag—Bue or-door tax is a village cess—Suit for declaration that a person is not liable to pay Hag Bua Punjab—Tenancy Act XVI of 1837, Section. 77 (3)(J)3. P. W. R. 803.	371
<i>Common Carriers</i> —Nature of liability—Implied convenient of a carrier by water 14 Bur. L. R. 37.	315
———Act. (III of 1885)—Amended by Act X of 1899. Sec. 10. Steam ship Company and Railway Company—Notice before suit. 8, C. L. J. 192.	473
<i>Company</i> —Debenture improperly registered—Liquidator cannot get it declared void. (124, L. T. 105; (1907); W. N., 249; 42, L. J. 738.)	III 3
———Adopting new regulations—Notice. (1907, L. J. 969. L. T. 10. W. N. 229. T. R. 57.)	III 1
<i>Contributory</i> —Transfer of share to a pauper to avoid liability. (1907 W. N. 213; T. R. 12. S. J. 825, L. J. 548.)	III 1
———Liability to promotor—Registration and stamps paid by promotor. 43, L. T. 478, 1908, W. N. 172.	III 17
———Debenture holders—receiver. Tuffnal v. Charlston, 43, L. J. 738.	IV 7

——Winding up—Requirements of affidavit alleging fraud. (1907)	
W. N. 254, 124. <i>L. J.</i> 130. 42. <i>L. J.</i> 772.	III 3
<i>Companies Act (VI of 1882) S. 61.</i> Contributory liable in respect of unpaid portions of calls even when the company's right to recover them to barred by limitation. 3. <i>M. L. T.</i> 390—31. <i>Mad.</i> 66	266
—— <i>S. 139.</i> —Execution of decree against company in liquidation not to be presented without making due provision for the right of Judgment-creditor—Judgement creditor attaching decree against company must be allowed to prove in the name of the decree-holder in liquidation. 30. <i>Mad.</i> 533... ..	106
<i>Contract Act. S. 221.</i> —Lien of Agent under <i>S. 221</i> of the <i>Contract Act</i> not affected by winding up order under <i>S. 149</i> of the <i>Companies Act.</i> 31 <i>Mad.</i> 123.	315
<i>Company's Batta.</i> —Abwab. 6 <i>C. L. J.</i> 667.	25
<i>Compromise decree.</i> —Going beyond subject—Matter of suit. 7 <i>Cal. L. J.</i> 493.	316
<i>Concurrent Lease.</i> —Right of lessee—Assignment of Landlords rights—Suit for rent against second lessee maintainable first lease not expired. 5. <i>A. L. J.</i> 429.	375
——Landlord entitled to recover rent only as against second lessee. <i>A. W. N.</i> 1908, 152.... ..	329
<i>Covenant to repair.</i> —Under lease. (1907, <i>L. T.</i> 660, <i>W. N.</i> 227, <i>T.</i> 62.)	III 2
<i>Confession</i> —Suspicious—Practice as to relying on where there is no other proof. 2 <i>P. W. R.</i> 70.... ..	III
——Admissibility of a confession recorded by a Magistrate in a Native State— <i>S. 164</i> of <i>Criminal Procedure Code.</i> 1898 <i>I.E. Act I of 1872.</i> <i>S. 26.</i> 2. <i>P. W. R.</i> 92.	XIII
<i>Conspiracy.</i> —Restraint of trade—Commodity article of commerce. 10, <i>L. R. A.</i> 268.	III 5
<i>Construction.</i> —Gift—House and its contents. 125, <i>L. T.</i> 237.	III 17
——Hindu Law Texts—Conflict between Mitakahara and Vyavahara Mayukha—Rule as to harmonising the difference. 32. <i>Bom.</i> 300.	354
——Principles—Life estate—"In trust" as may require."—"For her maintenance and support. 18 <i>M. L. J.</i> 331—31. <i>Mad.</i> 283.	507
——Will—Request to daughters "and their respective sons"—When their absolute estate or estate for life—Principles of constitution of Hindu wills—Succession Act, <i>Ss.</i> 82, 111. 35. <i>Cal.</i> 896	552
——Gift to T for her subsistence and other things. 4. <i>M. L. T.</i>	580

—Repealed statute—Mamlatdars Courts Act (Bom. Act III of 1906) Sec. 4.—Mamlatdars Court—Act (Bom. II of 1906) Sec. 4.—Mamlatdars Court suit for possession of a house situate within its Jurisdiction—Act of procedure. 31. Bom. 545. ...	15
—T. P. A. S. 76.—“Contract to the Contrary” 18 M. L. J. ...	229
—Power of attorney. 6 C. L. J. 639. ...	15
—Future interest—Interest to date of realisation 12 C. W. C. L. J. 233=5. A L J. =10. Bom. L. R. 144. ...	175
—documents.—Documents executed in the mofussil contracts by people of India Liberal construction.—Regard to be had to the circumstances of transaction—Intention to make land security for payment of debt—Charge—Transfer of Property Act. sec. 32. Bom. 386....	522
— <i>deed</i> .—Redemption before the expiry of the fixed period. Bom. L. R. 742....	494
— <i>of deeds</i> .—Deeds executed in the mofussil Liberal construction—Charge—Intention to make land security for payment of Transfer of Property Act. Sec. 100. (10. Bom. L. R. 575).	432
— <i>of deed</i> —Cess liability to pay—Cess Act. (IX B.O. of 1880) 1.—Mokurari lease. 12, C. W. N. 154. ...	76
<i>tive possession</i> —Doctrine of—Scope of, 12 C.W.N. 273 ...	106
—Municipal corporation—Trading as electric light authority—Whether contract must be under seal, 1908, W. N. 52; 52 S. 24 T. R. 322 ...	...(III) 9
Restraint of trade—Infant, 52 S. J. 714; 43 L. J. 505; 125 34 ...	(III) 19
Uberrimae fide—Statement in proposal of insurance for S. J. 517 ...	(III) 13
Against morals—Promise to marry on the death of a wife 197; 42 L. J. 792; 1908 W. N. 16 ...	...(III) 9
Puttas—Contract of Insurance illegal specific performance, T. 393 ...	430
Immoral contract—Right to sue, 10 Bom. L. R. 318 ...	266
Wagering contract—Badni—Principal and Agent—Their respective rights and liabilities in wagering contracts—Cash payment—Enforceable liability defined—Indian Contract Act IX S. 30, 12 C. W. N. 1102 ...	523
Validity of—Agreement by a Hindu not to marry a second time during the continuance of the first wife, 4 N. L. R. 86 ...	354
Escrow—All vendors not parties—Effect against execu-	

tants—Material alteration in document after execution—Effect of,	
1 Sind L. R. 93	151
<i>Contract for commission</i> —W.N. 141; 125 L.T. 105; 43 L.J. 374 ... (III)	15
<i>Contract Act S. 16</i> —Undue influence—Document executed when the executant was under arrest, 9 P. L. R. 523 ...	473
—Ss. 15, 16—Coercion—Undue—Influence—Mortgage deed executed by a judgment-debtor while under arrest in execution of a decree—Compromise—Civil Procedure Code, S. 375—Practice appeal—Trusted as Revision—Punjab Courts Act XVIII of 1884, Ss. 40 and 70 (a) and (b), 3 P. W. R. 342 ...	430
—Ss. 16, 19 (a)—Unconscionable bargain—Parties not on an equal footing—Defendant not aware of the nature of the transaction—Undue influence—Contract voidable, 32 Bom. 208 ...	316
—S. 23—Promise to pay money to procure resignation of public office not enforceable, 30 Mad. 530 ...	106
—S. 23—Mortgage contract—Mortgagors not entitled to whole property mortgaged—No illegality, 12 C. W. N. 94 ...	64
—S. 30—Wagering contract containing arbitration clause—Enforcement of Act III of 1865—Suit for injunction—Court fees—Several agreements—One injunction sought, 1 Sind L. R. 173 ...	151
—S. 56—Application of sale not completed return of deposit—Rescission of Contract, 4 A. L. J. 778 ...	15
—S. 196—Scope of, 10 Bom. L. R. 180 ...	269
—Ss. 198, 211, 216—Principal and Agent—Notification—Suit for adjustment of accounts, 29 All. 730 ...	107
—Partnership—Dormant partner—Partner—Contracting on behalf of himself and dormant partner cannot sue the contracting party after the death of the partner entering into the contract, 10 Bom. L. R. 306 ...	206
<i>Contribution</i> —Co-heir not liable to contribute towards expenses incurred by other heirs in litigation in respect of common property, 30 Mad. 526 ...	107
—Suit for—Set off—Limitation, 12 C. W. N. 60 ...	64
<i>Co-owners</i> —Right of one of them to build on common ground—Trespass—Injunction, 1 Sind L. R. 80 ...	153
<i>Copyright</i> —Painting unpublished—Innocent Publication of pirated copies, 1908, W. N. 41; 43 L. J. 90; 24 T. R. 311 ... (III)	9
—Dramatic piece, 52 S. J. 499 ... (II)	13
—Innocent infringement of unpublished drawings, 52 S. J. 660; 43 L. J. 448; 1908, W. N. 173... (IH)	17
—Infringement—Illustrations in catalogue—Portion of cata-	

- logue protected—Puffing statements—Injunction, 35 Cal. 463—12
C. W. N. 753 ... 357
- (*Act of 1882*), S. 1—International copyright—Exercise of
in England, 124 L. T. 239; 43 L. J. 17; 1908, W. N. 19 ... (III) 7
- Co sharers*—Suit for rent by one only for his share, 7 Cal. L. J. 812 317
- Partial—Partition—Suit for—Limitation Act, Art. 144—
Mortgage by sons—Adverse—Possession—Presumption—Parda-
nashin Lady, 1 Sind L. R. 133 ... 171
- landlord*—Suit for entire rent—Co-sharers made defend-
ants—Maintainability of suit—"Landlord" who is—Assignee of land
as well as of arrears of rent. 7. Cal. L. J. 425. ... 330
- Joint property—Co-sharer building on joint land without the
permission of the other co-sharers—Injunction. A. W. N. 1908. 19... 107
- Costs*.—Mortgage decree—Execution of decree for costs—Mortgaged
properties—Transfer of Property Act, S. 90. 35. Cal. 431. ... 317
- Taxation.—52. S. J. 684; 1908. W. N. 171=43 L. J. 448... III 17
- High Court Rules and Forms 1901. Rule 577—Taxing
master's decision on a question of costs—Review by the Chambers
Judge—Third Counsel's costs in a defendant long claus—Practice
as to retaining of Counsel and their costs—Costs of a third
Counsel engaged to ask for transfer of case from one Judge to
another—Practice, 32 Bom. 362 ... 357
- Right of suit*—Costs not allowed in execution department—
Cost of objections—Suit not maintainable, 5 A. L. J. 140 ... 153
- Court*—Process, abuse of—Wrong done by order of Court
—Court's inherent power to rectify—Events happening after the
filing of appeal 6 C. L. J. 662 ... 153
- Court of Wards Act*, (9 of 1879 Bengal Sa. 14, 18, 19—Communica-
tion of rent in kind (Chowls) into rent in money (nakdi) Court of
Wards power of to make such commutation—Benefit of Estate Ben-
gal Tenancy Act (VIII of 1884) Sec. 40—Commutation perma-
nent creation of vested remainder by a Mahomedan spes succes-
sioned. Creation of life interest amongst shias allowed. 32, Bom. 172. 336
- Court of Wards Act*—(Bengal)—Object of—When can take posses-
sion, 12 C. W. N. 1066 ... 524
- Court fee*—Mortgage suit—Compromise decree—Appeal from order
refusing to make order absolute—Transfer of Property Act, sec. 89
ad valorem Court fee, 12 C. W. N. 1028 ...
- on *plaint Reg. III of 1872*, S. 58—Settlement suit insti-
tuted before Settlement Officer without Court fee—Transfer of
Civil Court—Court fee on plaint if leviable, 12 C. W. N. 917 ... 422

- On set off—Civil Procedure (Act XIV of 1882), sec. III, 216, G. R. No. 7967 of 8-12-88—Superseded by Government, 17 K. L. R. 259... 164
- Court Fees Act*, sec. 7—Court fee—Suit for possession under lease, whether it is a suit for specific performance, 5 A. L. J. 534 ... 473
- *S. 7 (1) (c)*—Suits Valuation Act, s. 3 (1)—Rules under-rule (o)—Court fee—Garden—Fruit garden, 9 Pun. L. R. 150 ... 153
- *Clause 1*—Mortgage—Sale—Prior mortgages—No relief—Redemption fee payable on the plaint 5 A. L. J. 18 ... 108
- *S. 7 Sub-S. IV cl. (b) and art 17 cl. VI*—Partition—Joint Property—Denial of the extent or quantum of interest—Ejectment, 6 C. L. J. 651 ... 16
- *S. 7, clauses 5, IX (c)*—Suit against landlord and other persons claiming under him by lessee of melvaram rights fall under sec. 7 cl. 5 and not under cl. 11 (e), 31 Mad. 14=3 M. L. T. 8 ... 65, 209
- *Art 17 (6) Sched. 1, s. 7, cl. (4) c*—Suits valuation Act, s. 8—Suit for registration of document under sec. 77 of Registration Act does not fall for purposes of Court fees within sec. 7, cl. (4) c, of the Court Fees Act, but under art 17 (6) of Sch. II of the Act—Such suit to be valued for purposes of jurisdiction on the value of the property, 31 Mad. 89... 317
- *Art. 17 (i)*—Suit under s. 283—Civil Procedure Code—Stamp on the plaint—Declaratory suit and injunction—Value of suit, 12 C. W. N. 169=10 Bom. L. R. 1 ... 65
- Creditor and Debitor*—Relation of, 8 P. L. R. 1907, No. 77... 77
- Criminal Procedure Code**—Jurisdiction—Security to keep the peace—District Magistrate—Appellate Court—Power of to direct security to keep the peace—Conviction by a second or third class Magistrate, 35 Calc. 434=7 C. L. J. 602=12 C. W. N. 752... LXXIII
- *S. 4 (r) Act No. XVIII of 1879*—Legal Practitioners' Act, s. 9—Mukhtars—Authority of Mukhtiar to practice in Criminal Courts, 30 All. 66=A. W. N. 1908, 11 ... XIII, XLVI
- *S. 4 (o)*—Cattle—Trespass Act (1 of 1871), s. 130—Illegal seizure of cattle—"offence"—Power of District or specially authorized Magistrate to transfer such case—Subordinate Magistrate, power of, to try—Criminal Procedure Code, (Act V of 1898) ss. 4, (o) 162 and Sch. II, last claus, 34 Calc. 996 ... V
- *Sec. 30*—Jurisdiction to try offence under sec. 304, I. P. C. 3 P. W. R. 84 ... CIX
- *Ss. 36, 65, 107, (3) and (4), 114, 344*—District Magistrate

- ordering detention under 107 (4)—Person not sent before him under
 sec. 107 (3)—Jurisdiction, 2 Cr. L. Repl. 209... ..CXXV
- S. 75 and 204—Cancellation of warrant—Discretion, 1
 Sind L. R. 69LXXXVI
- S. 88—Attachment of accused's undivided interest in joint
 property—Absconding after being accused of murder, 2 Cr. L. Repl.,
 236CXXV
- S. 103—Construction—Burma gambling, 14 Bur. L. R. 81...LVIII
- S. 106—Security to keep the peace—Wrongful act—Ascertain-
 ment of the rights of the parties—Which party should be bound down—
 Criminal Procedure Code, s. 107—Riparian right—Right to khunta-
 gir, 34 Cal. 935III
- S. 106—Magistrate not empowered to take security to keep
 the peace—Jurisdiction of Appellate Court, 2 P. W. R. 77... ..III
- S. 106 (3)—Order to furnish security—Appeal—Court,
 10 Bom. L. R. 759... ..XCIII
- S. 107, 117—Order passed on consent of a party to be found down
 without evidence taken, 35 Cal. 644XCIII
- Ss. 107, 145—Disputes concerning Jalkar—Procedure, 6 O.
 L. J. 697—IV
- Ss. 108 and 118—Order binding down a party without sep-
 arate finding in regard to each member of the party—Illegality,
 12 C. W. N. 992... ..CI
- Ss. 110, 117—General rapute—Evidence of—Evidence of per-
 son who are not neighbours—Evidence testing of in cases under
 Chap. VIII, 12 O. W. N. 301... ..XXII
- S. 110—Landlord—Tenants of bad character—Lending
 money and settling—Association, 6 C. L. J. 711IV
- Ss. 112 and 122—Surety—Ability to influence the bad
 character—Mere solvency not sufficient; 1 Sind L. R. 46... ..
- Ss. 112, 110—Transfer of a case under s. 110—Power of the
 District Magistrate to direct, 12 C. W. N. 299XXIII
- Ss. 112 and 118—Failure to record an order under s. 118—
 Effect of—Irrregularity of procedure, 10 O. C. 365XXII
- S. 117 (4)—Associated together—Joining of persons with
 conflicting interest, 2 Cr. L. Repl. 209... ..CXXV
- Ss. 123 and 397—Act No. IX of 1894 (Prison Act) sec. 3
 (3)—Security for good behaviour—Imprisonment on failure to find
 security—"Sentence", 80 All. 334,CXXXVI
- S. 133—Procedure—Obstruction to a public way—Jury,

- 30 All. 869,... CXXVI
- S. 138—Burial ground—Order closing—Jurisdiction, 12 C. W. N. 70 ... XIII
- S. 145—Attachment and release—Revision petition against the order—Request to reattach pending disposal of the review petition, 2 Cr. L. Repl, 237 ... CXXVI
- S. 145—Dispute relating to land—Jurisdiction of Magistrate—Irregularities in procedure—Omission of personal and local notices—Filing of written statements—Exparte order—No opportunity given to a party of adducing evidence, 35 Cal. 774 ... OXII
- S. 145 *cl. (4)*—Evidence taken by Subordinate Magistrate on direction, 17 M. L. J. 535 ... IV
- S. 145—Omission of Magistrate to state grounds for passing order is an irregularity and does not render the proceedings void, if not prejudice caused thereby, 30 Mad 548 ... XXII
- S. 145—Duty of taking evidence whether first class Magistrate can refer to another subordinate Magistrate, 3 M. L. T. 108...XXIII
- S. 145—435.—Revision—Order as to moveables. 13 Bur. L. R. 372. ... XXXIV
- Ss. 145, 439.—Revision Criminal Cases—Dispute relating to immoveable property. 9, P. L. R. No. 71. ... XXXIV
- Ss. 145, 537.—Parties—Present notice and posted Irregularity—Effect of order, 4 A. L. J. 705... IV
- S. 164.—Statement by a Magistrate recorded under Right of accused to have copy before preliminary enquiry, 3 M. L. T. 14=30 Mad. 466... V, XIV
- S. 164—Evidence Act S. 26—Confession recorded in native territory, 9 P. L. R. 115 ... XXXIV
- S. 165—Sub-section 137. Penal Code Ss. 99, 147—Public servant acting without authority, 6 C. L. J. 753 ... XXIII
- Ss. 190 (1) 191—Applicability to appeal Court, 12 C. W. N. 438... XXXIV
- S. 192—Transfer of a case—Sub-Magistrate—Dismissal of case against one accused—Summons against others—Jurisdiction, 7 C. L. J. 249... XXXIV
- S. 195—Sanction to prosecute when to be granted, 12 C. W. N. 3 ... V
- S. 195—Information given to the police alleged to be false—Procedure—Notice, A. W. N. 1907, 288=A. L. J. 740... V
- Ss. 195, 476—Sanction—Practice—Granting, 13 Bur. L. R. 838 ... VI

- appeal lies to High Court against an appellate
 sanction granted by Court of First Instance, 30
 VI
 sanction to prosecute—Revision—Powers of
 1907, 283 VII
 description of sanction—Order of articles
 C. L. J. 49 XIV
 Code, Ss. 183, 186 and 355, 323—Offences
 sanction—Whether sanction necessary if com-
 355 and 323, I. P. Code, 3 M. L. T. 113 ... XXV
 to prosecute—Jurisdiction to grant or
 N. 1901, 28 XXV
 sanction to prosecute—Refusal by Subordi-
 nate can direct prosecution under S. 476, on
 10 Bom. L. R. 28 XXV
 P. Code, Ss. 195, 211—Conviction for
 of sanction—Whether material irregularity,
 XXXV
)—Fabrication of evidence and forgery—
 of the record in a suit—Sanction of the
 M. L. T. 496 XXXV
 —Difference between sanction and com-
 pences against public justice before Court,
 XXXV
 —Criminal Proceedings—Cognizance of a
 10 Bom. L. R. 153... .. CXXVII
 int—Sanction—Examination of complainant—
 umption—Evidence Act, Sec. 114—Privilege
 of justice—Printing Press and news paper
 7—Declaration by printer—Liability of prin-
 XIV
 o prosecute public servant like chief cons-
 324 and 355 not necessary, 17 K. L. R.
 XXXVI
 l of complaint—Further inquiry without
 sity of notice, 5 A. L. J. 74 XXV
 2—Penal Code, Sec. 323—Dismissal of case
 ainment of a fresh complaint on the same
 CXXVII
 437—Charter Act, S. 15—Presidency Ma-
 ge made by—Power of the High Court to

- interfere—No exercise or illegal exercise of jurisdiction, 6 C. L. J. 705... VII
- S. 203—Second complaint—First dismissed—Summarily—Whether second barred, A. L. J. 137=1908, A. W. N. p. 67 ...XXVI
- Ss. 203, 257, 437—Jurisdiction of District Magistrate under s. 437—Order directing that the accused should not be proceeded against and the process against him be withdrawn—Legality of District Magistrate's power to revise such order, 12 O. W. N. 68 ... XV
- Ss. 221, 222, 225, 534—Penal Code, ss. 147, 332—Separate sentences under them not allowed—Frame and joinder of charges—Omission to state time, place and common object when fatal, 2 P. W. R. 106... XXVI
- Ss. 233, 239, 439 and 53—Joint trial of persons accused of rioting—Opposite functions, P. L. R., (1907), No. 116 ... XV
- Ss. 233, 537—Joinder of two offences in one charge—Legality—Differences—Trial separate, 6 C. L. J. 757 ... XXVI
- Ss. 233 and 239—Charges—Joinder of, P. L. R. (1907), No. 117 ... XV
- Ss. 234 and 235—Charge—Misjoinder of charges—Illegality, 30; All. 351 ... OXXVI
- Ss. 234, 235, 236—Scope of—Referred to as exceptions in sec. 233, 10 Bom. L. R. 773... CXXVII
- Ss. 234, 235, 430, 432, 537—Misjoinder of charges—Drawing up of proceedings on the same day the offence is committed—I. P. Code, secs. 178, 179—Refusing to take an oath—Refusing to answer question—Oath refusal to take, 7 C. L. J. 63 ... XXXVI
- Ss. 250, 345—False or vexatious charge—Compounding of offences—Procedure, 10 Bom. L. R. 1056... CXXVIII
- S. 256—Whether applies to cases under S. 110, Cr. P. Code 12 C. W. N. 299 ... XXVI
- S. 256—Magistrate refusing to recall prosecution witnesses after charge on the ground of non-payment of necessary expenses by accuse—Illegal Procedure 2 P. W. R. 91 ... XV
- S. 256—Right of accused to recall prosecution witnesses for cross-examination—Denial of trial *denovo*, 7 C. L. J. 240 ... XXXVII
- S. 257—Cross-examination of prosecution witnesses, 9 P. L. R. 113... XXXVII
- S. 271—Statement by prisoner when called upon to plead—Procedure—Practice, 5 A. L. J. 157=1908, A. W. N., p. 54 ...XXXVII
- Ss. 287, 288 and 436—"Committing Magistrate"—"Order him to be committed"—Meaning of, 3 M. L. T. 25 ... XXVII

- S. 307—Reference to High Court—Sessions Judge—Points of reference, 10 Bom. L. R. 173 ... XXXVII
- S. 307—Jury not to be questioned as to reasons for verdict 30 Mad. 469 ... VII
- Ss. 337, 339 and 342—Evidence Act 1 of 1872, S. 118—Pardon by Local Government—Evidence—Accomplice—Statement made by, P. L. R. 1907, No. 113 ... XVI
- Ss. 342 and 362—Evidence recording of in petty cases—Magistrate to use discretion—Retrial—Transfer, 10 Bom. L. R. 201. XXXVIII
- S. 344—Adjournment of criminal case—Costs not payable by accused, P. L. R. 1907, No. 114 ... XVI
- S. 345—Magistrate permitting compromise of the offence of rioting, S. 147—Penal Code—Offence not compoundable—Magistrate's permission, ultra vires, 2 P. W. R. 93 ... XVI
- Ss. 346 and 532—Commitment made under S. 346, Cr. P. Code—Denovo trial, if necessary, 12 C. W. N. 136 ... XVI
- S. 350—Denovo trial—Omission to examine a fresh prosecution witnesses—Prejudice to the accused, 12 C. W. N. 138 ... XVI
- Ss. 367, 424—Judgment of Criminal Court on appeal—Contents of—Reformatory Schools Act Sec. 16, 93 P. L. R. 140... XXXVIII
- Ss. 394, 395—Sentence of whipping offender not in a fit state of health—Whipping partly carried out—Imprisonment in lieu of balance—Legality, 3 M. L. T. 31 ... XXVII
- Ss. 434, 349—Conviction of two offences—Appeal—One of the convictions set aside—Same sentence retained—Enhancement, 2 Cr. L. Repl. 211... CXXVIII
- S. 435—Revision Bombay District Municipal Act (Bom. Act III of 1901, S. 86—Recovery of Municipal claims—Notice of demand—Appeal—Magistrate, 9 Bom. L. R. 1347 ... VII
- Ss. 435, 438, 439—Revision—Practice—Sentence reduced by sessions court—Application by District Magistrate asking for enhancement, 1 Sind. L. R. 40... XXXVIII
- Ss. 435, 118—High Court—Revision—Findings of fact how far conclusive, 9 Bom. L. R. 1385... XVII
- Ss. 436, 439—Commitment to the Court of sessions—ordered under S. 436, High Courts' power to revise under S. 439—Preliminary inquiry into sessions cases—Magistrate power and duties in regard thereto, 11 C. W. N. 117=6 C. L. J. 760... VIII
- Ss. 437, 439—District Magistrate—Power of revision—Misappreciation of evidence by sub-Magistrate and discharge, 18 M. L. J. 57... XXXIX

- *Sec. 438*—Revision—Second class—Magistrate—Second revision to Session Judge, 4 A. L. J. 805... .. XVII
- *S. 439*—Revision—Complaint under S. 476, 13 Bur. L. R. 838... .. VIII
- *Ss. 439, 476*—Revision—Order legally passed by a Collector, but erroneously as by the District Magistrate, A. W. N. 1907, 277 = 4, A. J. T. 701 VII
- *Ss. 439, 537*—Irregularity—Mis joinder—No prejudice, P. L. R. 1907, No. 116 XVI
- *S. 439*—Revision—Practice—Discretion of Court as to entertainment of application on revision, A. W. N. 1908, 25 ... XXXIX
- *S. 476*—Bond genuineness of Penal Code, s. 193—Prosecution—Appellate Court reversed by—Res judicata—Order under S. 476 set aside—High Court's power to set aside order under s. 476—Criminal Procedure Code, 6 C. L. J. 703 = 12 C. W. N. 1 ... II
- *S. 476*—Time for making order under the section, 17 M. L. T. 584 XXVI
- *Ss. 476, 439*—Revision—Powers of High Court—Practice; A. W. N. 1903, 27... .. XXVI
- *S. 476*—Order by a Criminal Court—Revision, 4 A. L. J. 803 XVII
- *Ss. 476, 439*—Revision—Powers of High Court—Criminal Procedure Code, ss. 161, 162—Statements made to police officers—"Stage of a judicial proceeding, A. W. N. 1908, 22 ... XXXI
- *S. 487*—Presidency Magistrate—Power to try case of disobedience of his own order—Indian Penal Code, sec. 180, 7 C. L. J. 70 X
- *S. 488*—Maintenance—Wife—Application for enforcement of order—Effect of decree for restitution of conjugal rights, P. L. R. 1907, No. 115 XV
- *Ss. 497, 498*—Explosives Act (VI of 1908)—Bail when to be granted—Likelihood of absconding—Evidence of complicity—What evidence sufficient—Police—Officer swearing to existence of evidence—Delay in production of evidence—Remand—Bail—Cancellation of, 13 C. W. N. 43... .. CXXI
- *Ss. 497, 498*—Explosives Act VI of 1908—Bail when to be granted—Object of non-bailable offence—Likelihood of absconding—Seriousness of offence charged—Evidence of offences charged—Evidence of complicity—What kind of evidence sufficient—Prosecution, opportunity, to produce evidence—Remand—Conspiracy—Case of cancellation of bail, 13 C. W. N. 51; CXX

- S. 517—Conviction for sedition—Confiscation of the press
—Illegal, 2 P. W. R. 97 XXVIII
- S. 517—Forfeiture—Sedition—Printing Press—Instrument
sued for the commission of offence—Disposal of Property—Penal
Code, Ss 62, 124 A, 34 Cal. 986=6 C. L. J. 744 IX
- S. 517—Appeal, 13 B. L. R. 273 X
- S. 517—Order directing delivery of property in the absence
of any criminal proceeding or enquiry without jurisdiction, 6 C. L.
J. 707 X
- S. 526—Transfer—Bias—Evidence judicially recorded in
another case—Opinion formed therefrom, 1 Sind L. R. 37 XI
- S. 528—Magistrates—Subordination of—Transfer—Additional
District Magistrate—Omission to state grounds, 34 Cal. 918 X
- Ss. 537 (b), 195, 132—Want of sanction—Irregularity—
Want of sanction under S. 195, Cr. P. Code, is no ground for setting
aside a conviction after trial, 17 M. L. J. 533... .. X
- S. 537—Summons—Issue of—Fresh summons issued on the
same information—Irregularity in procedure, 31 Bom. 611 XXVIII
- S. 540—Witness called by Court—Extent of cross-exami-
nation, 12 C. W. N. 130 XXVIII
- S. 565—I. P. Code, Ss. 457, 511, 2 P. W. R. 95 XVIII
- S. 565—Penal Code, S. 176—Omission to notify under that
section if punishable, 4 M. L. T. 325... .. CXXX
- Cross objections*—Respondent against respondent, 11 O. C. 93 398
- Custom*—Succession—Adoption—Adopted son dying without male lineal
descendants, 8 P. L. R. 1907, No. 77 17
- Succession—Sister—Position of sister cannot be assimilated
ing to that of a daughter—Collaterally exclude sisters from inherit-
immoveable property whether ancestral or acquired, 2 P. W. R. 516 66
- Succession—Sister not entitled to succeed as daughter of fa-
ther of deceased: 4 P. L. R. No. 74 209
- Alienation—Ancestral holding by a childless Awan of
Phulpur Jullundur District, 2 P. W. R. 488 66
- Muhammadan Law—Succession—Daughters—Right of re-
presentation—Heirs of predeceased son—Kashmiris of Banga—
Jullundur District, P. L. R. 1907, No. 121 109
- Succession—Ancestral property—Forfeiture of by Govern-
ment on owner absconding—Reversioner—Right of—Criminal Pro-
cedure Code, (Act V of 1898), ss. 87, 88, 9 P. W. R. 1191 358
- Damages*—Measure of—Subsidence of a high way, 43 L. J. 416; 1908,

W. N. 158=S. J. 620	... ..	...(III) 17
———Suit for exclusive possession where plaintiff was only entitled to joint possession—Right to claim damages for wrongful ouster, 3 M. L. T. 277	... ..	269
<i>Darkhast</i> —Grant or land on—Grant good if made by competent authority, unless set aside on appeal—Omission to consult one whose opinion is not binding does not vitiate the grant, 31 Mad. 264	... ..	474
<i>Death</i> of a proforma defendant—Appellant—Abatement of appeal, 4 A. L. J. 809	... ..	87
<i>Debutter property</i> —Permanent lease by shebait void and not voidable—Adverse possession—Acceptance of rent effect of 12 C. W. N 63	... ..	67
<i>Deccan Agriculturists Relief Act, s. 3 and 11</i> —Mortgage suit—Jurisdiction, 1 Sind L. R. 246	... ..	565
——— <i>Ss. 12 and 13</i> —Usufructuary mortgage—Redemption—Payment of the amount found due on taking account, 32 Bom. 576	... ..	564
——— <i>S. 15 B cls (1) and (2)</i> —Decree on mortgage—Payment by instalments—Sale on default in payment of an instalment—Application to make the decree absolute—Extension of the provisions of the Deccan Agriculturists' Relief Act to the District—Application for payment by instalments, 32 Bom. 445	... ..	565
——— <i>Ss. 46, 47</i> —Conciliator's certificate obtained in the name of one co-parcener—Suit on behalf of the family—The remaining co-parceners joinings as plaintiffs to the suit—Hindu law—Manager—Powers to represent the family. 32 Bom. 275	... ..	525
<i>Declaratory decree</i> —Power of Court to make declaratory decree—Suit for possession by alleged next reversioners on ground that their mother who had a woman's estate in immoveable property was dead—Failure to prove mother's death—Dismissal of suit so far as possession was concerned and declaratory decree made as to plaintiff's title, 35 Calc. 189	... ..	269
———Discretion, 18 M. L. J. 17	... ..	210
<i>Declaration</i> —Right to—Rights in property affected—Subsequent conduct of defaulter, 8 C. L. J. 185	... ..	474
<i>Decree</i> —Representative—Debt of father—Decree against son as representative, 3 M. L. T. 314	... ..	270
———No specific discretion as to accounts in the decree—Court cannot direct accounts to be taken before commissioner when parties have arrived at an agreement after the decree—Appeal against order of a Judge when lies, 10 Bom. L. R. 488	... ..	397
———Execution—Power of executing Court—Transfer of Property Act, sec. 89—Adjustment, 7 C. L. J. 581	... ..	390

—Sale proceeds in execution of—Balance after payment of instalments overdue—Attachment by money decree holder—Mortgagee's right for satisfaction of subsequent instalments, Sind L. R. 44	391
—Constitution of—Condition—Time for payment—Appeal—Appeal confirmation of original decree—Computation of period, 3 M. L. T. T. 26	68
<i>Deed</i> —Construction of—Maintenance deed—"Putra pant adi santan"—Meaning of—Intention, 7 Cal. L. J. 291... ..	210
<i>Defamation, newspaper libel</i> —Publication for public benefit—Fair and bonafide—What constitutes—Administration of justice, how far matters of comment—Allegations of facts to be distinguished from comments—Imputation of criminal offence not comment—Privilege—Matters per se libellous—Want of jurisdiction effect of—Defamation of a Class—Rights of individuals of the Class, 12 C. W. N. 490	270
—Libel—Fair comment—Hunt v. Star Newspaper Co., 52 S. J. 376, 124, L. T. 502, 43 L. J. 103 (IV) 7	
—Privilege—Accused person—Reply to—Notice, 18 M. L. J. 353	524
<i>Dekhan Agriculturists Relief Act, ss. 7 and 12</i> —Execution of bond admitted—Onus to prove consideration—Duty of the Court to examine parties, 1 Sind L. R. 75	153
—Secs. 12, 13 and 71—Application of the sections to a suit instituted before the act came into force in a particular District—Retrospective effect—Taking an account between parties 31 Bom. 630	111
—Secs. 12, 13—Usufructuary mortgage—Redemption—Accounts taken—Result of the account, 10 Bom. L. R. 745... ..	475
—S. 15 B.—Decree—Instalments—Power to award first instalments, 10 Bom. L. R. 533... ..	358
—S. 15 (b)—Decree on mortgage—Direction to pay interest—Application to cancel direction, 32 Bom. 1903=9 Bom L R. 1834... ..	17,210
—S. 20—Civil Procedure Code, s. 13—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekhan Agriculturists' Relief Act to the District—Application for instalments—Res judicata, 32 Bom. 391=10 Bom. L. R. 577... ..	432, 524
<i>Digwar</i> —Service tenure—Resumption—Digwars of Ram Gurh—Dismissal by Government and re settlement with them as sikmi	

talukdars—Default—Proof of—Act VIII B. C. of 1878—Settle- ment under—Effects, 12 C. W. N. 178...	68
<i>Distress</i> —Exemption from—Gas-engine lent on hire—Purchase sys- tem, 1907, L. T. 11; S. J. 39; T. J. 691, T. A. 35, ...	(III) 1
<i>Divorce</i> —Life interest in a bequest lost by, 42 L. J. 742, 124 L. T. 109 ...	(III) 3
<i>Dhammathats</i> , 13 Bur. L. R. 277 ...	
<i>Divorce Act (IV of 1869), secs. 14 and 50</i> —Practice—Partion ser- vice of substituted service—Unreasonable delay, 12 C. W. N. 1009	475
<i>Document</i> —Constr. ction—Operation after death—Revocability, 12 C. W. N. 942 ...	508
<i>Easement</i> —Ancient rights—Obstruction of—Infringement—Nuisance —Acquiescence—Decree for damages—Mandatory injunction, 35 Calc. 661...	5
———Right of privacy—Defendant not allowed to give himself increased facilities for overlooking plaintiff's zenana, 29 All. 582...	17
———Way—Right of—Implied grant—Alternative defences—No objection—No prejudice, 8 Cal. L. J. 289 ...	526
<i>Easement Act, sec. 60</i> —Land-holder and tenant—Occupation of build- ing site in abadi—Erection of permanent building—Suit for eject- ment, 29 All. 652...	69
<i>Ejectment</i> —Notice to quit—Interesse termini persons having rights of—Form of notice—Damages—Acceptance of rent after expiry of notice to quit it waiver, 12 C. W. N. 1060 ...	583
———Proof of—In case of, 14 Bur. L. R. 200...	476
———Onus of proof of possession, 7 Cal. L. J. 414 ...	271
———Suit for—Tenancies of homestead land—Tenancy created before the Transfer of Property Act—Abandonment or surrender— Notice to quit if necessary, 7 C. L. J. 309 ...	218
———Res-judicata—Denial of landlord's title—Dismissal of previous suit for rent on denial of relationship of landlord and tenant, 34 Calc. 922...	25
<i>Emigration Act, (XXI of 1883) s. 107</i> —Servant offending under the Act in the course of his master's employment for his masters' bene- fit Master's liability—Artizan—Engine driver on board a steamer, 32 Bom. 10 ...	LIII
<i>Employer</i> —Liability for keeping dangerous machine, 1907, L. R. 24; L. T. 11 ...	(III) 1
<i>Enhancement</i> —Contract of tenancy, 7 C. L. J. 284 ...	330
<i>Entry</i> —Effect of entry and possession of land under the common title of one co-owner, 6 C. L. J. 735...	93

<i>Estoppel</i> —Against minors, 12 C. W. N. 481	211
—Recital in a deed—Effect of, in an action collateral to it— Promise—Transfer of the chance of an heir-apparent, validity of— Mutation of names—Possession—Transfer of, Transfer of Property Act, sec. 6 (a)—Evidence Act, s. 115 11 O. C. 301	526
—Plaintiff can not question jurisdiction of Court in which he filed suit, P. L. R. 1908, No. 306	1 2
—Execution of decree—claim partly decreed—Appeal for dismissal portion not barred by plaintiff seeking execution of the decree passed in his favour 9 P. L. R. 1... ..	154
<i>Evidence</i> —Relevancy of revenue survey maps—Probative value of, 12 C. W. N. 273... ..	112
—Depositions—Admissibility—Presumption—Indian Merchant Shipping Act IV of 1883). Preliminary enquiry—Statements—Not challenged, 35 Calc. 751... ..	476
—Thakbust and Revenue Survey maps evidentiary value of— Statement recorded in the presence of parties—effect of, 35 Cal. 621. 432	
—admission—Principal and surety—Admission of the principal debtors, 3 A. L. J. 142... ..	154
—Judgments—Preemption—Custom, 9 P. L. R. No. 69... ..	211
—Ex parte entry in order sheet—Bengal Tenancy Act. S. 61, 7 C. L. J. 251... ..	271
—Good character of wife—Prosecution of husband, 10 L. R. A. 335... ..	III 5
—Khasra Admissibility of Entries in Remarks Column of, 11 O. C. 195... ..	359
—Pre-emption—Letter posted—Address, 7 Cal. L. J. 251	271
— <i>Ss. 24, 167</i> —Criminal Procedure Code S. 162 Bombay City Police Act (IV of 1902) S. 61 Amended Letters Patent, 1865 Cl. 26 Statement made by a witness to and taken down in writing by a Police Officer admissibility in evidence confession of accused admis- sibility of, 32 Bom. 111	LIII
— <i>Ss. 25 226</i> —New trial ordered, 3 M. L. T. 263	LXVIII
— <i>S. 27</i> —Confession—Accused pointing out stolen property con- cealed in a pond, 9, P. L. R. 490... ..	XCI
— <i>Sec. 30</i> —Confession—Joint trial—Plea of guilty by one of the accused—Use of confession against the rest—Criminal Procedure Code, Ses. 271, 342, A. W. N. 241... ..	CXXX
— <i>Ses. 30</i> —Confession, Admissible as Evidence against a Co accused, 11 O. C. 328	CXXXI
— <i>S. 32</i> —Partnership—Account books of the partnership—Ho-	

ries in them binding on partners interse. A partner can surcharge and falsify the accounts—Sleeping or dormant partner. Relation between him and the managing partner—Accounts—Directions to commissioner, 10 Bom. L. R. 811...	526
— <i>Ss. 32, 33 (1) and (3) 32 (5) 157</i> —Admission by plaintiff when admissible in his favour—Statement in previous position 12 C. W. N. 266...	112
— <i>S. 32 cl. (5)</i> —Admissibility in evidence—Kursinama—Statements by members of family as to relationship—Document admitted in first Court without objection—objection to admissibility not allowed on appeal, 84 Cal 1059.	18
— <i>S. 35</i> —Paythings whether evidence, 14 Bur. L. R. 30.	211
— <i>S. 91</i> —Proof of original consideration, (14 Bur. L. R. 179).	433
— <i>S. 91</i> —Oral evidence admissible to show that a contract made by a person in his own name was made on behalf of himself and his parents, 3 M. L. T. 259—31 Mad. 45	272
— <i>S. 92</i> —Oral evidence—Out and out sale—Fraud. (S. A. No. 30 of 1907)	11
— <i>S. 92</i> —Proviso 1—Sale deed—Oral evidence—Admissibility of—Mortgage by way of conditional sale—Agreement reconveying property—Registration, 1 Sind. L. R. 96	154
— <i>S. 92</i> —Oral evidence to prove that a deed purporting to be a mortgage was intended to be a sale admissibility of—Representatives in interest of parties to the deed, 11 O. C. 45,	318
— <i>S. 108</i> —Presumption of death—Onus of proof, 25 Cal. 25...	272
— <i>S. 115</i> —Estoppel—Occupancy holding—Non-transferable—purchase by landlord in execution of money—Decree whether subject to previous mortgage, 12 C. W. N. 721	359
— <i>S. 116</i> —Estoppel of tenant—Title enquired into in special circumstances—Succession among Mahomedan deruish of a monastery, 17 K. L. R. 292	164
<i>Excise Act, (XII of 1890), ss. 44, (2), 48, 57</i> —Sub inspector—Excise officer, 5 A. L. J. 444	XCI
—(<i>Bengal Act 7 of 1878</i>), <i>ss. 53, 59, 61</i> —Offence under <i>ss. 53 and 64</i> —License for sale and possession at a certain place—Sale at a different place—Place— <i>S. 59</i> of the Excise Act—Offence under—Servant's liability for the master's Act, 12 C. W. N. 461	LIV
—(<i>No. XII of 1869</i>), <i>ss. 44 (2) 48 and 57</i> —Definition excise officer—Jurisdiction, A. W. N. 1908, 157	LXXIX
—(<i>N. W. P.</i>) <i>Seca. 44 (2), 48 and 57</i> —Definition Excise officer Jurisdiction, 30 All. 77...	CXXI

—Burma illegal search—Effect of, 14 Burma. L. R. 208 ...	CVI
<i>Excise Act (Punjab) 1876</i> <i>ss 30, 31, 40 (c) Rule 38</i> —Foreign liquor— Importation of its small quantity for private consumption illegal, 2 P. W. R. 117.	XVIII
—(<i>Bombay</i>) <i>Secs. 47, 9, 11</i> —Kaju liquor—Country liquor—Pos- session of the liquor—Mere possession of the liquor under the ma- ximum limits is no offence, 10 Bom. L. R. 284... ..	XIV
— <i>Secs. 6 and 7</i> —Warrant—Further enquiry by Magistrate— Practice—Warrant and complaint—Production of, 1 Sind, L. R. Cr. 67... ..	XIV
— <i>Execution</i> —Civil Procedure Code Section 108—Decree set aside as against one of several joint judgment debtors—Decree pas- sed—Subsequently against—Exempted party, 29 All. 623... ..	28
—Mortgage decree—Decree directing sale of nij jote lands mort- gaged—Mortgage—Judgment debtor if competent to raise the ques- tion of the sale ability of jotes in execution—Sale-ability or otherwise of nij jote lands onus of proof of—(<i>Regulation III of 1812</i>) sec. 11 Southal Pergunna—Regulations—Settlement Court divisions of suit— Maintainability of, 7 C. L. J. 101... ..	101
— <i>Execution proceedings</i> —Striking of petition—No disposal C. P. Code S. 223. Limitation Act. Art 179, 17 M. L. J. 616.	155
—Suit—Sale by mortgagee of property not mortgaged validi- ty of where to be questioned, 7 C. L. J. 270	273
—Applicability, 14 Bur. L. R. 35... ..	238
<i>Execution</i> —Duty of executing Court, 3 P. W. R. 225.	273
<i>Execution of decree</i> —Mortgage—Decree for sale of mortgaged pro- perty after redemption of prior usufructuary mortgage sale in sa- tisfaction of all debts, A. W. N. 1907-286.	19
—Decree—Declaratory of future rights effect of—Relief in execution proceedings, 1 Sind, L. R. 184... ..	211
—Appropriation of debt due to two persons towards a debt due against one of them alone—Amendment of plaint, 11 O. C. 225	433
—Refund of money realized in execution of a decree after- wards reversed in appeal—Limitation—Execution of decree stayed by injunction Procedure. A. W. N. 1908. 206	433
<i>Execution of decree</i> —Sale of ancestral property—Civil Procedure Code, s. 320—Rules framed by local Government application under rule 17 (XIII A). 30 All. 402=A. W. N. 1908, p. 77	318, 359
—Application for, on the last day of twelve years succeeding the date of the decree—Civil Procedure Code, s. 230, 11 O. C. 57... ..	273

- Attachment—Objection to attachment successful but costs not allowed—Costs of objection not recoverable in separate suit A. W. N. 1908, 18 ... 112
Execution sale—Warrant of title—C. P. Code, sec. 315, 13 Bur. L. R. 323 ... 19
Executor—Will—Intermeddling with estate—Decree of interference necessary to charge executor—Suit for account against executor—Account on footing of wilful default, 32 Bom. 364 ... 537
 ————Also residuary legatee—Mortgage by—Legatee's right to impeach—Legacy charged on—Immoveable property—Priority—Notice—Construction—Notice—Delay—Consent, 12 C. W. N. 993 ... 477
Ex parte decree—Suit set down for hearing before the date fixed in summons—Civil Procedure Code, secs. 68, 69, 96–100, 101, 112 and 113—High Court Rules, Nos. 111 and 112, 10 Bom. L. R. 301 ... 233
Extradition Act, (IX of 1908), s. 8—Warrant issued by Political Agent, endorsement on—Jurisdiction of Magistrate to release arrested person on bail where no such endorsement. 7 C. L. J. 171... LIV
Factories Act, (14 of 1881), secs. 14, 15, 17—Factory—Occupier—Notice under s. 14—Effect of—Liability of the occupier for breach of the Act—Successor of the occupier, 10 Bom. L. R. 38 ... XXX
Family arrangement—Consideration—Hindu law—Agreement amongst co-parceners not to partition—To what extent binding, 12 O. W. N. 793 ... 260
Fatal accidents, Act (13 of 1855)—Damages—Measure of, 4 M. L. T. 238 ... 527
Ferry—Franchise—Interference with bridge, 1907, L. J. 683; L. T. 34; W. N. 225, T. R. 70 ... (III) 1
Fishery—Independent julkar—Navigable river—Survey map—Map for private purposes—Comparative value, 12 C. W. N. 334 ... 156
 ————Dispute relating to a fishery—Whether proceedings should be under S. 107 or S. 145, 35 Cal. 117 ... LVIII
 ————right—Initial and navigable river when the river changes its course—Right of Government, 11 C. W. N. 105 ... 20
Forest right of lease—Grant to cut timber of a certain size of limited rights—Construction of, 7 O. L. J. 152 ... 113
Forest Act, Madras S. 21 (f), 33, 36—Transport of Sandalwood—Acquittal—Forfeiture, 2 Cr. L. Repl. 236 ... CXXXI
Fraud—Allegations of—Particulars constituting fraud should be given—Issue in cases of fraud, 32 Bom. 255—10 Bom. L. R. 276...211, 319
Gambling Act, III of 1867—Search warrant issued to Police Officer by Magistrate—Such Police Officer endorsing it for execution to

- another Police Officer—Legality of execution of search by the Police Officer, 5 A.L.J. = 1908, A.W.N. 9 = 30 All. 60 ... IV, XVIII, XXX
- (II (B. C.) of 1857) Ss. 3, 10—Game of chance, of skill—Ring game—Chief dement skill—Certain amount of chance—No offence, 6 C. L. J. 708 ... X
- General Clauses Act (I of 1904) S. 7*—Repeal of the Mamlatdar's Courts Act (Bom. Act III of 1876) by the Mamlatdar's Court Act (Bom. Act II of 1906)—Suit commenced under the former act—Effect of the latter act, 32 Bom. 434
- General Clauses Act (U. P.) S. 11*—Execution of decree—Procedure—Lease of mohal executed by Collector after the coming into operation of the Agra Tenancy Act 1901, A. W. N. 1908. 219. ... 477
- Gift to widow*—Construction of, 31 Mad. 179... 438
- Construction of deed of gift "Malik." Gift to widow as "Malik we Khudak khshiyar"—"Absolute ownership." Heritable and alienable estate—No distinction between male and female donee, I. L. R. 30 All. 84... 277
- Possession not necessary—What amounts to possession when donor and donee are together in the gifted house, 3 P. W. R. 349... 435
- Daughter—Marriage portion—joint family—Managing member—Capacity of, 17 M. L. J. 528... 21
- Gift by registered instrument—No validity if unaccompanied by delivery of possession, 30 Mad. 519 ... 127
- Gift of considerable portion of moveable or immoveable—Joint family property invalid—Acquiescence, 30 Mad. 452 ... 20
- Grant*—Construction of—Forefeiture—Right of recentry, 8 C. L. J. 188 ... 477
- Grant by Government of the revenue of a village as a suit of assessment—Cultivation by grantee of uncultivated or unassessed land,—Grantee can do so and profit thereby, 32 Bom. 432 ... 528
- Guardian*—Step-mother—Re-marriage by, 4 Nag. L. R. 20 ... 214
- Guardian can withdraw—Procedure, 3 P. W. R. 241 ... 275
- Liability of—For profits of property in the hands of a stranger, 12 C. W. N. 481 ... 212
- Guardian and Wards Act, Ss 7, 41 and 49*—Guardian and Ward—Review of order dismissing application for appointment of Guardian—C. P. Code, S. 623, P. L. R. 1907, 105 ... 114
- Ss. 28, 29 and 47—Permission to transfer order granting—Appeal against order granting...Permission to transfer, O. C. 291. 275

- *Ss. 29, 31*—Interest rate of—Bond guardian with permission of the Judge—Duty of Judge while giving permission, 5 All. L. J. 260=1908, A. W. N. 75 ... 275
- *S. 38*—Inquiry before removing a duly appointed Guardian, 1 Sind L. R. 92 ... 157
- *Ss. 47, 48*—Majority Act—Power of Chamber—Judge to alter, vary modify or set aside orders made by his predecessor in Chamber under the guardian and Wards Act—Period of minority on vacating of such orders does not extend to 21 years, 31 Bom. 540... 114
- Defecto guardian*—Mother, transfer by—Tunatics' benefit setting aside of transaction, 5 A. L. J. 474. ... 446
- Guardian*—Joint Hindu family—Minor—Co-parceners—Guardian of the family properly appointed by the court—Guardianship ceases when one of the co-parceners attains majority—Guardianship goes to the adult parceners, 32 Bom. 259=10 Bom. L. R. 279 ... 212, 321
- Guardian adlitem*—Appointment of passing over certificated guardian effect of, 7 C. L. J. 270... 274
- Appeal—Guardian adlitem not made a party by appellant—Limitation, 30 All. 55 ... 274
- Guardian and Ward*—Common creditor—Payment by Guardian; 3 M. L. T. 321... 274
- Arbitration—Appointment of guardian not to be settled by arbitration, 30 All. 137. ... 319
- Bond by guardian Liability of minor—Necessaries—Bond to keep alive a debt due for necessities, when binds minor's estate—Limitation Personal liability, 12 C. W. N. 256... 115
- *Guardian ad litem*—Civil Procedure Code S. 447. necessity of formal discharge from the duties of guardian adlitem—Suit to set aside a decree, A. W. N. 1908, 23. 30 All. 105, 156 ... 274
- Rival claimants for guardianship—Arbitration—Power to refer dispute to arbitration. Code of Civil Procedure sec. 647, 5 All. L. J. 101 A. W. N. 1908, 51. ... 157
- *Section 7*—(1) Minority Act Sec. 3—Minority—Guardian and Ward—Grant of probate or letters of administration to the guardian of a minor does not extend period of minority, 8 L. R. 1907. No. 105 ... 114
- *S. 77*—Appointment of—Hindu Law, 32 Bom 50. ... 212
- (*8 of 1890*) *S. 29*—Courts' duty in granting leave—Compromise—Certificated guardian if to take permission of Judge—Review suit to set aside decree—If maintainable—Fraud—Valuation jurisdiction, 8 Cal. L. J. 266. ... 528

- Sections. 29 and 31—Guardian and minor—Mortgage of minor's property to secure a loan sanctioned by the Court Interest, 30 All. 188 ... 361
- Sec. 52. Act No. IX of 1876—(Indian Majority Act) Section 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, Section 440, 29 All. 672... 69
- Haji-Chakarum*—Liability of vendee to the Landlord for—Wajib-ul-arz, (11 O. C. 64). ... 319
- High Court*—Jurisdiction over Sumbalpur—District Extention of High Courts jurisdiction to place not within jurisdiction of any High Court—If ultra vires—Interpretation of statute—Reference to repealed Statute. 28 and 29. Vict. C. 15. Dt. 3. 12 C. W. N. 657 ... 320
- Jurisdiction—Immoveable property, 12 C. W. N. 1066, ... 528
- Letters patent 1865, clause 12, whether an objection that no leave was taken under—Clause 12 can be waived—Letters patent, 1885, clause 12—Registrar power of to grant leave under clause 12 of the—of the Letters patent, 7 Cal. L. J. 441. ... 276
- Power of act X of 1859. Sec. 153—Civil Procedure Code (act XIV of 1882) Sec. 622. Charter Act 24 and 25 Vict-c-104) Sec. 15—Revision where appeal lies, 8 C. L. R. P. 431... 404
- Power of S. 15 of the Charter Act—Interfering with order of Presidency Magistrate Criminal Procedure Code. S 203. Order under Dismissal of complaint. Rule issued by High Court Magistrate's duty to show cause, 12 C. W. N. 698. ... 362
- High Court Rules Rule 31*—Third part notice application to be before filing written statement—Practice and Procedure, 10 Bom. L. R. 1024... 509
- Rule 80*—(A I) Pauper petition to sue as—Prothonotary's decision—Application to Judge in Chambers—Right to be heard, 32 Bom. 163... 320
- Rule 122*—Civil Procedure Code Sec. 491—Arrest before Judgment—Damages for wrongful arrest—Damages for arrest cannot be tried by counterclaim Practice, 10 Bom. L. R. 1002. ... 570
- Rule No. 511*—Bill of costs—Order for taxation—Business not transacted in Court—Practice, 32 Bom. 428... 528
- Rule 544*—Taxation—Bill of costs—Practice, 10 Bom. L. R. ... 115
- Law*—Dedication of—Presumption as to, 1908, W. N. 183 ... (III) 20
- Law*—Administrator—Pendente lite, liability of, to pay debt deceased—Quacy—Executor de son tort, 35 Calc. 276 ... 276
- Adoption—Custom—Pleadings—Succession—Right of colla-

terals adoptive father to succeed to the property of adopted son, 9 P. L. R. 374=3 P. W. R. 209	320
—Adoption—Jains—Custom—Adoption of married man—Suit for declaration of invalidity of adoption—Burden of proof, 30 All. 197=5 A. L. J.=1908 A. W. N. 791...	213,478
—Adoption—When sapinda consents on condition that adopted son should not claim the property of his adoptive father, 2 M. L. T. 364	20
—Adoption Rule that no adoption allowed where no marriage possible between the natural mother in her maiden stage and adopting father—Limitations of the rule—Gotras—Prawars—Virudha Sambandha, 10 Bom. L. R. 948	570
—Adoption—Widow (succeeding as a gotraja sapinda in a joint Hindu family to an estate not her husband's—Powers of adoption, 32 Bom. 499	570
—Adoption—Alienation by the widow before adoption—Right of the adopted son to dispute the alienation, 10 Bom. L. R. 1029...	571
—Alienation by Hindu widows—Consent of female reversioner if passes absolute—Property of transaction—Presumption of law, 12 C. W. N. 914	484
—Alienation by widow—Succession—Custom—Hindus of Bhale Sultan—Chattris—Exclusion of daughters and their issue—Mitakshara Law—Consent of revisioners—Rule as to quantum of consent—Consent obtained after execution of alienating deed, Bom. L. R. 1348=9 Mad. L. J. 1, 12 C. W. N. 34=9 A. L. J. 1	72
—Alienation by sonless proprietor—Onus—Beddi Khattris of Kahwal village of Dasuda—Tahsil of Hoshiarpur District, P. L. R. 1908, No. 25	109
—Alienation by a sonless proprietor—Daughters—Remote—Collaterals—Rattal jats of late village—Lahore District, 9 P. L. R. 264	209
—Alienation by remote aridian—Nullity—Purchaser's right to restitution—Guardian also co-heir—Alienation to discharge debts of deceased—Validity of, 1 Sind L. T. R. 221	306
—Alienation by a widow—Right of reversioners to challenge—Whether Crown can challenge, 2 P. W. R. 452	115
—Alienation by widow—Position of person—Claiming through her, 35 Cal. 420	384
—Alienation by widow—Gift to reversioner for the time being if passes absolute title, 12 C. W. N. 49	20

- Alienation by widow**—Purchaser entitled to possession during her life time.
(S. A. 343 of 1907), *Maruti v. Trimbak* (IV) 4
- Debts**—Son—Right of to challenge a ready money—Debt contracted by the father—Antecedent debt—Meaning of—Grounds for challenging a debt contracted by Hindu father, 18 O. C. 360... 158
- Debts**—Son's liability for father's misappropriation when such misappropriation amount only to a breach of Civil duty, 31 Mad. 161... .. 434
- Father's debts**—Son's liability—Breach of civil duty—Breach of contract—Misappropriation, 17 M. L. J. 613... .. 158
- Liability of sons to pay father's debts**—Tort committed by father—Decree for damages against the father—Son cannot be held liable under the decree, when the estate be inherited from his father has derived no benefit by the Act, 10 Bom. L. R. 297... .. 214
- Liability of sons for father's debts**—Defence that debts were incurred for immoral purposes—Burden of proof, 30 All. 156 363
- Debt**—*Mitakshara*—*Mayukha*—*Marriage*—*Samskara*—*Marriage of a co parcener*—Family purpose, 32 Bom. 81 213
- Son's liability to pay father's debt**—Decree for damages resulting from a wrongful act committed by the father—Ancestral estate in the hands of the son not liable under the decree, 32 Bom. 349 435
- Debutter**—Hereditary—Shebaitship validity of disposal by by Will—Usage family custom, 12 C. W. N. 318 157
(See Gifts).
- Gifts**—*Impartible estate*—Previous suit compromised—Effect of compromise—Interpretation, 5 A. L. J. 425 362
- Inheritance**—Exclusion from inheritance—Disqualification of husband as murderer—Wife not effected by disqualification—Construction of texts, 10 Bom. L. R. 149 = 32 Bom. 275... 159, 554
- Inheritance**—Berar husband sister's daughter preferred to his brother's son, 4 Nag. L. R. 31 278
- Abandoned wife**—Succession to, 4 Nag. L. R. 31... .. 277
- Mother inheriting to her son takes a limited estate**—Funeral ceremonies of mother, 32 Bom. 26 214
- Funeral ceremonies of mother**—Son's religious duty to perform them—Their expenses are charged upon the son's estate—*Mitakshara*—Interpretation, 32 Bom. 26 214
- Exclusion from inheritance**—Deaf and dumb son—Vesting of the estate in the widow of the last male holder—Subsequent birth

- of a son to one of the disqualified sons—Divesting of estate, 32 Bom. 455 ... 529
- Disqualified heir—Widow of the disqualified heir—Exclusion from inheritance—Rule as to construction of Hindu Law texts 32 Bom. 275 ... 365
- Disqualification—Heirs complicity in murder of deceased man—Quantum of proof—Onus acquittal in Criminal Court, how far proof of innocence—Unchastity of mother [no text—Raghunadana—No binding authority in southern India, 18 M. L. J. 70 ... 214
- Daughter—Collaterals of the 7th degree not entitled in presence of daughter—Chohan—Rajputs of Kharman—Tahsil of—Jagadhiri—Amballa District—Onus probandi to prove—Exclusion of daughter, 2 P. W. R. 123=9 Pun. L. R. No. 99 ... 209
- Dayabhaga—Spiritual efficacy—Doctrine of discussed—Proximity—Affection—Natural justice—Mitakehara principle of—A cable, where Dayabhaga—Silent—Re-union, 35 Cal. 721 ... 479
- Joint Hindu Family*—Mortgage executed in name of minor—Contract Act, s. 11—Civil Procedure Code, s. 562—"Preliminary point" A. W. N. 1908, 10 ... 70
- Joint family*—Son's interest in a tenant's holding of the father, relinquishment by father without son's consent—Validity of, 11 O. C. 292 ... 529
- Joint family*—Manager can represent the family in suits brought on behalf of it—A co-parcener can also represent it if his action is consented to or ratified by his co-parceners—Certificate from conciliator obtained by one ensures for the benefit of all, 10 Bom. L. R. 505, ... 521
- Joint family property*—Release by a co-parcener—Right of the co-parceners son then in existence to recover his share in the family property—Right of an after born son in the property, 10 Bom. L. R. 778... 480
- Joint family*—Suit—Adult members parties. Minor members not impleaded how far bound jurisdiction of Court to pass a decree for sale of the whole family property, 17 M. L. J. 541... 21
- Joint family*—Mortgage by uncle for personal benefit, 5, A. L. J. 417. ... 363
- Joint family*—Ancestral property—Doctrine of nucleus—Difference between joint property—Joint family property, and joint ancestral family property, 32 Bom. 473... 571
- Joint family*—Presumption as to the character of the property held by the father—Self acquisition, 32 Bom. 572... 572

—Suit by Karta alone for rent due to family not competent, 7 Cal. L. J. 251...	278
—Property acquired by joint exertion of father and sons living—Joint character of the property—Nucleus of property—joint property—Self acquired property. 10 Bom. L. R. 175	158
—Gift of a considerable portion to female—Effect of on other members, 3 M. L. T. 28...	71
—Joint family property—Joint ancestral family property—Distinctions between nucleus, how far a necessary ingredient, 10 Bom. L. R. 189...	162
—Liability of other members of family for managing members' debts, A. W. N. 1908, 192...	435
—Right of a member of, to represent other members of the family—Suit for recovery of the whole of the family property by one member. 11 O. C. 14...	322
—Foreclosure of mortgage sons not made parties—Right of sons to redeem—Transfer of Property Act. S. 85, A. W. N. 1908, 106	322
—Mitakshara—Co-parcener when joint alienating—Mortgage—right of—Partition estoppel. 7 C. L. J. 644 ...	363
—Single member of family not competent to alienate his undivided share in the family property, A. W. N. 1908, 163.	364
—Liability of sons for fathers debts—Defence the debts were incurred for immoral purposes—Burden of proof, A. W. N. 1908, 61=5 A. L. J. 115...	160
—Suit by one member against others to recover debt due to family realised by him, 5 Nag L. R. 84	362
—Right of a member of—to represent other members of the family—Suit for recovery of the whole of the family property by one member, 11 O. C. 15	215
—Mitakshara—Ancestral property—Property inherited from maternal grand father, 29 All 667...	72
—Joint family—Mortgage by a manager—Sale by a mortgage property in execution of money—Decree prohibited. Transfer of Property Act Sec. 99—Mortgagee's possession not adverse—Minor not bound by sale, 4 A. L. J. 787...	40
—Joint family—Manager—Suit on behalf of the family—Powers of manager, 32 Bom. 375...	528
—Dayabhaga—Joint property or self—Acquisition—Money received at marriage by a member, 11 C. W. N. 103.	21
—Maintenance—Right of wife who had lived apart from her husband during his life time to claim maintenance after his	

death—Father-in-law having ancestral property bound to maintain under such circumstances, 31 Mad. 338	572
——— <i>Maintainance</i> —(See Maintenance)... ..	
——— <i>Partition</i> —(See Partition)... ..	
——— <i>Succession Mitakshara</i> —Stridhan of a maiden father's mother's sister—Maternal grandmother—Priority between, 10 Bom. L. R. 522... ..	366
——— <i>Marriage</i> —Samaskara—Marriage of a co-parcener—Family purpose, 4 Bom. L. R. 1366... ..	71
——— <i>Maintenance</i> —Re-Marriage of widow, A. W. N. 1908, 149	322
——— <i>Maintenance</i> —Wife's right of residence in ancestral family house against the creditor's right to sell it to recover family debts, 9 P. L. R. 1908. No. 31.	115
——— <i>Maintenance</i> —Widowed daughter in law—Plea in defence that the widow did not live with the husband during his life—time not good 18 M. L. J. 254	364
——— <i>Maintenance</i> —To widow—Living apart during husband's life—time for no sufficient cause—Right to maintenance after death of husband out of his estate, 3 M. L. T. 266	278
——— <i>Maintenance</i> —Widow having fund from her husband's estate to maintain her for five years—Suit for arrears of maintenance premature, 10 Bom. L. R. 770... ..	480
——— <i>Restitution</i> —Of wrongful rights—custody of wife. Hindu husband deserting his wife for many years—Discretion of Court in restitution of conjugal rights, 3 P. W. R. 531... ..	573
——— <i>Reunion</i> —What is, 35 Calc. 721.	480
——— <i>Self-Acquisition</i> —Presumption, 10 Bom. L. R. 754. ...	480
——— <i>Self-Acquisition</i> —Burden of proof—Throwing into common stock—Issue not taken in lower Courts—Jurisdiction in second appeal, 3 M. L. T. 314... ..	279
——— <i>Stridhan</i> —Mitakshara—Maiden's stridhan—Priority between maternal grandmother and father's mother's sister, 32 Bom. 409... ..	530
——— <i>Stridhan</i> —Pitridatta—Ayautuka succession to ayautuka—Stridhan—Dayabhaga Chapter IV sec. II para 16—Kanya meaning of sons or married daughters preparable heirs. 8 C. L. J. 200 = 12 C. W. N. 924... ..	480
——— <i>Stridhan</i> —Property obtained by a step-mother after partition between two sons by instituting a suit, 4 A. L. J. 673. ...	22
——— <i>Succession</i> —Mitakshara—Priority between half-brother's son and full sister—Vyavehara Moyukha's view as to sister's position in the line of heirs—Balambhata and nanda Pandita—Relative values	

- of commentaries by—Rules of Interpretation, 10 Bom. L. R. 389. 323
- Succession*—Competition between full sister and half-brother's son—Mitakshara—Sister's place in the line of heirs—Vyavahara—Mayakha, views of, on the point—Value of the commentaries of Balambhatta and Nanda Pandita—Conflict between Mitakshara and Vyavahara Moyukha—Rule as to harmonising the difference, 32 Bom. 300 365
- Succession*—Exclusion from inheritance—son of a disqualified heir is not excluded from inheritance Vesting of—Estate in widow—Subsequent birth of a son to the disqualified heir does not divest the estate, 10 Bom. L. R. 559... .. 365
- Succession*—Illegitimate daughter—Shudra, 10 Bom. L. R. 736. 481
- Succession*—Dayabhaga—Joint estate—Joint nephew preferential heir to nephew separated by exclusion—Spiritual benefit, doctrine of not the only principle of succession—Mitakshara—Application of, in, in absence of texts of Dayabhaga—Quasi contract and affection—Principle of, 12 C. W. N. 511 280
- Succession*—Person excluded from succession by incurable disease, A. W. N. 1908, 47=5, A. L. J. 115... .. 154
- Succession*—Right of adopted son in his natural father's estate—Jats of Panipat Kannal District P. L. R. 1907, No. 101 ... 110
- Succession*—Mother party to murder of her son cannot succeed as heir to such son—Unchastity of mother no bar to her succeeding as heir to her son—Degradation does not involve loss of proprietary rights 31 Mad. 100. 323
- Succession*—Widow—Step son—Arains of Ludhiana District P. L. R. 1907, No. 93. 119
- Succession*—Widow Collateral succession by—Alienation by widow—Right of widow of Collateral to object—Ghirths of Kangra Declaratory suit, P. L. R. 1907. No. 108. 109
- Succession*—Co widow's interest in the property of their deceased husband—Right of assigning her share—Partition—alienation of her share—Valid during her life—time—Survivorship, 31 Bom 560... .. 22
- Succession*—Mitakshara—Bandhus—Daughters' son's son entitled to preference over daughter's son—Variance between pleading and proof, 30 Mad. 406... .. 22
- Succession*—Bandhus—Preference among—Male Bandhus entitled to preference over female Bandhus though never in degree—Accretions what are, accretions pass with estate—Adverse possession

—Title acquired by—Party holding under a deed or will which is invalid cannot set up a higher right than that claimable under the deed or will, 31 Mad. 321	573
— <i>Succession</i> —Dayabhaga—Sister's daughter's son—Succession certificate Act, (VII of 1889)—Prima facie—Title, 12 C. W. N. 453	215
— <i>Succession</i> —Will of last male owner making daughter's son—Karta—Claim—Daughter's husband, 4 M. L. T. 9	437
— <i>Succession</i> —Gift to widow of Dharmakartaship—Gift by widow—Next reversioners passing out of the family by adoption, 4 M. L. T. 5...	437
— <i>Succession</i> —Dayabhaga — Succession Certificate — Sister's daughtee—Sister's daughter's son—Spiritual efficacy the criterion of inheritance—Succession Certificate Act, s. 6, 35 Cal. 631	436
— <i>Widow's estate</i> —Alienation of a portion of estate without legal necessity—Consent of next reversioner, 35 Cal. 934	575
—Widow—Sale by widow—Legal necessity—Right of reversioner to have sale set aside, A. W. N. 1908	367
—Widow—Alienation—Consideration in part, binding on reversioners—Sent by reversioners to set aside—Pleadings—Consents, decree—Frame of, 17 M. L. J 2	162
—Widow—Effect of compromise entered into by a Hindu female with a limited estate, A. W. N. 1908, 16=5 A. L. J. 43	116
—Widow—Gift from husband's estate by widow to daughter—Transfer by daughter to her sister—Suit by reversioner—Declaratory decree—Discretion of Court—Specific Relief Act, s. 42. A. W. N. 1907, 269	23
—Widow taking absolute estate under a consent decree—Suit by reversioners to recover property after his death—Limitation Act. Art. 120 and 123, 10 Bom. L. R. 210	216
—Widow's estate—Widow—Gift in favour of—Malik—Meaning of, 10 Bom L. R. 525=5 A. L. J. 67, 12 C. W. N. 266=7 C. L. J. 131,...	116
— <i>Widow's estate</i> —Estate—Moveable inherited from husband—Gift invalid, 32 Bom. 59	216
—Widow's estate—Simple bond executed by Hindu widow for legal necessity—Decree personal—Sale does not effect reversioner, 12 C. W. N. 769	366
—Widow's estate—Simple debt due by a widow—Legal necessity—Only life estate—Saleable in execution, 5 A. L. J. 367=1908, A. W. N. 173	366
—Widow's estate—Power of widow in possession of husband's	

estate—Alienation of estate made by widow with concurrence of reversioners—Consent at time of—Alienation—Subsequent ratification—Quantum of consent necessary—Custom excluding daughters from succession—Evidence of, 30 All. 1	280
—Widow taking absolute estate under a consent decree—Suit by reversioners to recover property after her death, 10 Bom. L. R. 210	281
—Widow—Raising funds to discharge husband's debt—Knowledge of lender, 3 M. L. T. 323... ..	282
—Widow—Alienation of husband's property by widow—Rights of reversioners to sue, A. W. N. 1908, No. 20/	437
—Widow—Alienation by without legal necessity—Consent of female reversioners—Aliance—Nature of estate taken—Proper purpose—Presumption, 7 C. L. J. 120	438
—Widow—Widow in possession of husband's estate as inferior proprietor—Effect of enlargement of estate of inferior proprietor by action of Government—Makaddam, 9 W. N. 1908, 222	481
—Widow—Alienation of portion of estate—Consent of next reversioner—Validity, 8 Cal. L. J. 280... ..	530
—Widow—Alienation by the widow—Permanent lease by the widow necessity, 10 Bom. L. R. 927... ..	575
—Widow—Payment by wife of husband's debts during his life time—Voluntary payment—Joint Hindu family—Sale of property belonging to one member of a joint family—Separation—Sale set aside—Rights of persons entitled to such property after separation, 30 All. 352	574
—Will—Construction of gift to female—Gift for maintenance may be of an absolute estate—Where testator gives a female immoveable property for maintenance and makes several devises of other properties to others and adds a clause declaring the gift to be absolute, the gift for maintenance will be an absolute gift—Devise in possession of land under an invalid will must be presumed to prescribe for the estate given by the will, 31 Mad. 849	575
—Wills—Construction thereof—Indian Succession Act, Ss. 101 and 102—Testator's institution with reference to the residue, 4 M. L. T. 306... ..	576
—Will—Construction of document—Persona designata, A. W. N. 1903, 249=4 A. L. J. 526	576
—Will—Adopted son to take after widow of good character—Contingent interest—Uncertainty—Implied contract on adoption not to make will, 12 C. W. N. 668	820

— <i>Widow's estate</i> —Hindu widow—Mortgage of husband's estate adversely to adopted son—Suit to enforce against adoptive son— —Suit to enforce against adoptive son— <i>Lis pendens</i> —Contentions suit—Application for leave to sue in forma pauperis—Civil Procedure Code, sec. 410, 30 All. 95	282
— <i>Payment by wife of husband's debts during his life-time</i> — —Voluntary payment, 1908, A. W. N. 143	324
— <i>Effect of compromise entered into by a Hindu female—Estate</i> , 30 All. 75	280
— <i>Woman's estate</i> —Position of a purchaser from a female with limited estate, 10 Bom. L. R. 230	282
— <i>Will</i> —Construction of—Hindu widow—Dedication of property to idol, if valid—"Malik"—Meaning of Wards—If simply absolute ownership—Limited grant—If and when effective—Suit for declaration of property to be debutter—Civil Procedure Code, ss. 234, 280—Mortgage decree, s. 244—Applicability of, 10 O.L.J. 20	367
— <i>Will</i> —Construction—Bequest to "daughters and their respective sons"—Restriction of descent to male issues—Absolute or life estate—Woman's estate—Survivorship between daughters—Spiritual benefit—Remainder over to sons—Gift over to daughters on failure of adoption—Succession Act, ss. 82, 116, 117, 12 C. W. N. 729—10 Bom. L. R. 5=5 A. L. J. 460	368
— <i>Will Dayabhaga</i> —Widow when merely entitled to maintenance if can consent validity of grant to Thakur, maintenance—right to end amount if can be limited by Will—Residence restriction as to place of—"Just cause" for disregarding restriction—Concubines, objection to living in the same house with—Uninhabitable house, 12 C. W. N. 808	368
— <i>Will</i> —Intention of the testator—Rules of construction—Absolute; 1 Sind, L. R. 21.	369
— <i>Will</i> —Will of Illiterate person—Proof of knowledge of contents of will purporting to bear the mark of illiterate testator. 11 O. C. 20... ..	242
— <i>Will</i> —Construction of—Feeding and paying—Brahmins if valid bequest, 12 C. W. N. 1083.	530
<i>Holiday</i> —Gazetted holiday, period fixed for payment expiring on—Delay due to official oversight—Question of Compliance with the decree right of appeal—Power of Court to extend period of payment—Appeal treated as revision—Civil Procedure Code Ss. 214, 244 and 622.	340
<i>House</i> —Shops—Business done in residential buildings, 8 P. L. R.	

1907, No. 80... ..	43
———Search by Magistrate—Statutory—Jurisdiction—Indian Arms Act (XI of 1878) Sec. 25—Arms search for—Grounds of belief, 12 C. W. N. 973... ..	505
<i>Husband and Wife</i> —Jats, 3 P. W. R. 265.	325
———Implied authority of wife to pledge husband's credit when rebutted, 30 Mad. 543... ..	116
———Guarantee signed by a wife for her future debts, 124 L. T. 129	(III) 7
———Pleading credit, 52 S. J. 478	(III) 15
<i>Idol</i> —Holding property—Properties dedicated to a family idol may be converted into similar property by the consensus of the family, 12 C. W. N. 98	3
<i>Immoveable property</i> —Whether standing timber is, 7 C. L. J. 152... ..	117
<i>Inam</i> —Madras Enfranchised Inams Act (IV of 1866)—Service inam enfranchised in widow's name under Act IV of 1866 not alienable by widow beyond her own lifetime, 30 Mad. 434	23
——— <i>Land</i> —Sale of validity of—Subsequent enfranchisement—Effect of—Transfer of Property Act, s. 43, 3 M. L. T. 243	283
<i>Inams</i> —Resumption—Position of former Inamdars, 4 M. L. T. 305	577
<i>Income Tax Act, 1866, s. 14</i> —Compulsory payment of income tax by one party in respect of outstanding due to another—Suit to recover the same from other party, 3 M. L. T. 114	117
<i>Incomplete transaction</i> —Failure of mortgagee to pay mortgagor or previous incumbrance, 9 Pun. L. R. 152	174
<i>Independent advice</i> —Opportunity—To obtain promissory note—Assignment of, 12 C. W. N. 1102	510
<i>Inheritance</i> —(See Hindu Law).	
<i>Indian Arbitration Act, ss. 13, 14</i> —Technical misconduct—Remitting back, 1 Sind L. R. 116	139
<i>Injunction</i> —Ancient Lights—Injunction to restrain defendant from interfering with ancient lights—Quia timet action necessary—Ingredients for, 32 Bom. 146	283
———Permanent—Blocking up of a Government Channel by a ryotwari tenant—Loss of supply of water to the lands of another tenant—Cause of action against ryat—Whether damage should be alleged and proved, 3 M. L. T. 273	325
———Servant engaging in the same trade after leaving off service, 125 L. T. 33	(III) 118
———Practice, (1907 S. J. 825, T. R. 20	(III) 2

- Delay—Trespass—Practice as to, (S. A. 193 of 1902), *Raghavji v. Mahant Bhaktidas* ... (IV) 3
- Insolvency Act*—Order passed by chartered High Courts—Effect of—
 Decree holder—Right of—Where debt wrongly entered in the schedule
 —Order of discharge passed by chartered High Courts operates
 throughout the whole of British India, 10 O. C. 305 ... 78
- (*XI and XII Vic. c. 21*) s. 9—Procedure—Adjudication of
 insolvency application for—By petition or by a rules—Rule obtained
 per. incuriam, 12 O. W. N. 538 ... 283
- (*St. 11 and 12 Vic. c. 40*) s. 7—Insolvency—Vesting order
 —Official assignee—Withdrawal of the petition for insolvency—
 Right of official assignee to maintain a suit, 10 Bom. L. R. 178, ... 163
- Insolvent*—Judgment-debtor—Attachment—Sale of his share in ancestral
 property—Partition suit by purchaser in execution maintainability
 thereof—Sec. 7 of the Indian Insolvency Act, 171 and 12, vic. Cap
 211, 4 M. L. T. 188... 581
- Insolvent Act (Indian St. 11 and 12 Vic. C. 40) S. 5*—Insolvent—
 Debtor's Court at Bombay—Jurisdiction 'Reside' A person resid-
 ing at Shanghai cannot apply for insolvency to the Bombay Court.
 10 Bom. L. R. 34 ... 117
- (*Indian*) (*11 and 12. Vic. C. 21*) Secs. 27, 26—Jurisdiction
 of the Insolvent Court outside the Bombay Presidency—Person in
 possession of Insolvents' property can be directed to hand it over to
 the official assignee. 32 Bom. 198 ... 325
- (*4912, Vic. C. 21*), Sec. 27—Commissions on policies of insu-
 rance are assets—Salary—Emolument, 10 Bom. L. R. 579 ... 439
- Sec. 7—Insolvent—Vesting order—Official—Assignee—With-
 drawl of petition for insolvency—Right of official assignee to bring
 suit—Right of official assignee to continue suit after withdrawal of
 petition, 32 Bom. 221 ... 439
- S. 49—"May" construction of—Stay of further proceedings
 after the filing of the insolvents' schedule, 10 Bom. L. R. 345 ... 283
- (*St. 11 and 12 Vic. C. 40*) Sa. 7, 26—Insolvents' property
 at Shanghai—Order vesting the property in the official assignee at
 Bombay. A British Subject in possession can be ordered to deliver
 the property to the official assignee—Commission to examine wit-
 ness at Shanghai, 10 Bom. L. R. 965 ... 577
- Insurance*—Insurable interest—wife, 24 T. R. 100 ... III 18
- Interest*—Rate fixed by court in suit by prior mortgagees not binding
 in a subsequent suit by puisne mortgagees to redeem, 31 Mad. 258. 494
- Penal rate—Fair interest to be allowed, 1 Sind. L. R. 113. 163

——Kathiawar Chief 12 p. c. interest by way of damages—Compound, 18 K. L. R. 14...	372
——Legacy, 1908, W. N. 18...	III 9
——Payable under a contract—Creditor dead no legal representative—Debtor's liability to pay interest—Cessation of liability. 4 M. L. T. 335.	577
<i>Interest Act</i> —Hindu Law on interest when to be invoked, 18 M. L. J. 245	370
——(23 of 1839)—Interest not claimable where no agreement and no demand in writing—Hindu Law not applicable in cases of payment of interest, 31 Mad 250=4, M. L. T. 787.	482
——(XXXII of 1839)—Hindu Law on the subject of interest—When to be invoked, 3 M. L. T. 278...	284
——Plaintiff not a Hindu—No agreement to pay interest—Interest when allowed, 1 Sind L. R. 119	216
<i>Interlocutory</i> —Judgment—Judgment based upon an assumption or hypothesis subsequently ascertained to be erroneous. Re-opening the portion of the case affected by the error, 32 Bom. 482	544
—— <i>Interpleader</i> —Suit to redeem mortgage against two parties claiming mortgage money—Appropriate relief, 10 Bom. L. R. 814...	297
<i>Invocations and Designs Act</i> —(V of 1888) Sec. 4 (9) and (10)—“District” and “District Court” meanings of “District Court” if it includes High Court in its original—Jurisdiction—Sec. 29, (2) (3) and (4) bars certain defences to an action—Secs. 30 and 31 application for a rule to a High Court—Procedure—Intention of Legislature, 12 C. W. N. 446	217
<i>Irregularity</i> —Waiver by accused—Effect—Transfer of case—De novo trial—Criminal Procedure Code Sec. 350, 12 C. W. N. 140.	XXII
<i>Issues</i> —Framing of—Exact words of the Legislature relating to issues 32 Bom. 356	440
<i>Jhansi Incumbered Estates Act</i> (16 of 1882) Se. 8 and 28—Mortgage—Unlawful consideration—Contract Act S. 23—Transfer of Property Act—Section 43, 30 All. 38=1908, A. W. N. 276...	24, 284
<i>Joint Family</i> —(See Hindu Law)...	
<i>Joint trial</i> —Theft and disposal of proceeds 14, Bur. L. R. 38	LV
<i>Judgment of the Appellate Court</i> —What is should contain—Judgment of the first court, whether may be read as supplementing judgment of the appellate Court—Joint trial of several accused, 12 C. W. N. 184.	XVIII
<i>Judicial officers Protection Act</i> (18 of 1850)—Scope of Whether Secretary of State protector, 3 P. W. R. 220	326

————S. 1—Judicial Acts, 12 C. W. N. 974	482
<i>Jurisdiction</i> —Succession to foreign state—Tipperah Raj—Succession to—Act of State—Declaratory suit—Contingent right—Right of suit, 35 Cal. 777	532
————Power of Court to correct its own mistake—Inherent power—Amendment of sale certificate—Sale certificate including a property not sold—Civil Procedure Code. S. 244, 12 C. W. N. 1027.	483
————Civil Court suit to set aside—Government order imposing full assessment, 3 M. L. T. 104... ..	118
————Claim for pre-emption of revenue paying land—Competency of Court to entertain it with regard to its value at thirty times the Jama—Its incompetency to decree possession on payment of a sum exceeding its pecuniary jurisdiction—Return of plaint, 2 P. W. R. 456.	73
————Reference to subordinate Magistrate—Local enquiry—Right of superior Magistrate, 3 M. L. T. 402.	XCVIII
————Question of—When entertainable in appeal—Civil Court's Jurisdiction when ousted. 8 C. L. J, 116.	439
————Exercise of by Courts—Concurrent, 7 Cal. L. J. 499—12 C. W. N. 636	326
————Declaratory suit by objector decreeholder and judgment debtor—Valuation C. P. Code. S. 283, 3 P. W. R. 259	326
————When suit instituted against a deceased person—Courts have no jurisdiction to allow the plaint to be amended by substituting the names of the representatives of the deceased, 31 Mad. 86	284
————Pre-emption—Decree—Sum payable as price exceeding Court's pecuniary jurisdiction, 3 P. W. R. 323	371
————Small Causes Court—Plaintiff giving credit for a sum admittedly due from him to defendant whether amounts to relinquishment, 13 Bur. L. R. 367	217
————Order of Magistrate for maintenance under S. 488 of the Code of Criminal Procedure does not oust the jurisdiction of Civil Courts—No injunction to restrain proceedings under S. 488, 30 Mad. 400... ..	24
————Foreign Court—Becoming member of a foreign partnership, 1907, W. N. 236; 124 L. T. 84; 42 L. J. 7237 ... ..	...(III) 3
————Assistant Judge—Probate proceedings—Civil Courts Act, s. 16—Act 1 of 1900, s. 2 (F. A. 163 of 1906), Laxmi v. Aba, ... ..	...(IV) 10
<i>Jurisdiction of Civil and Revenue Courts</i> —Punjab Tenancy Act,	

(XVI of 1887), secs. 14, 17, [3] (a)—Land lord and tenant, 9 P. L. R. 356—3 P. W. R. 212	327
——Suit for declaring moquarari Dari rights in land cognizable by a Civil Court—Punjab Tenancy Act XIV of 1887, sec. 77 (3) (d). 3 P. W. R. 313	371
<i>Jurisdiction of Civil and revenue Courts—Punjab Tenancy Act, (XVI of 1881) s. 77 (3)—Landlord and Tenant—Occupancy tenant—Haq Bua (Door tax)—Declaratory suit by occupancy tenant denying liability, 9 Pun. L. R. 559</i>	578
<i>Jurisdiction—Question of—When entertainable in appeal—Civil Court's jurisdiction when ousted, 8 C. L. J. 116</i>	439
<i>Jury—Judge's opinion on evidence, 7 Cal. L. J. 246</i>	XI
——Trial by—Misdirection—Culpable homicide—Proper charge in case of culpable homicide—Direction as to truth of plea of accused—Misrepresentation as to the effect of medical evidence—Expression of opinion by Judge, 35 Calc. 531... ..	...XCVIII
——Charge to the jury—Misdirection—Culpable homicide—Omission to ask the jury to consider the intention or knowledge of the accused—Omission to tell the jury to consider the question of alibi—Facts expression of Session's Judge's opinion on first information—Omission to place before the jury—Indian Penal Code, secs. 304, 309, 148, 147, 12 C. W. N. 774=7 Calc. L. J. 599 ... ..	...LXXIX
Kathiawar—C. P. Code, ss. 588 cl. (24) and 498—Appeal against refusal to grant temporary injunction, 17 K. L. R. 290	163
——C. P. Code, ss. 26, 27, 32—Non-joinder of a brother, 18 K. L. C. 6	372
——Original side of agent's court, 18 K. L. R. 238	578
——Partition—Non-judicial estate and partition, 18 K. L. R.	578
——Penal Code, secs. 497, 498—Special rules passed in Malia state in 1878 for adultery and co-habitation with other's wife, 17 C. L. R. ... ..	...LXVIII
——Practice—Dismissal of appeal for the fault, 18 K. L. R. 227	578
——Sanati vero, 18 K. L. R. 238	578
——Test to determine nature of mortgage—Receipt of rents 17 L. R. 258... ..	74
——Bantwa memons, 18 Kat. L. R. 196	532
——Execution of private decree passed against share holders indebted to Government—Payment of guaranteed loans, 17 Kat. L. R. 379	327

<i>Lambardar and co-sharer</i> —Powers of lambardar to deal with co- parcenary lands—Lease for 7 years, A. W. N. 1908, 56=5 A. L. J. 173=30 All. 163, 166,373	
<i>Land Acquisition Act, (1 of 1834)</i> —Apportionment—Landlord and tenant—Bengal Tenancy Act, s. 50—Applicability of—Presumption of permanency of holding—Compensation money, 35 Cal. 763 ... 535	
— — — — — Objection—Reference—Party—Jurisdiction of Court. 12. C. W. N. 987 483	
— — — — — Compensation—Apportionment of—Principal. 7. C. L. J. 284 ... 328	
— — — — — Declaration—Land actually acquired not mentioned—Refer- ence to Civil Court, 3. C. L. J. 39 373	
— — — — — Transfer of property Act, secs. 88, 90—Decree for sale—Com- pensation money—Application for execution against compensation money, 6 C. L. J. 745 121	
— — — — — Acquisition by Govrenment of a part of mortgaged property — mortgage entitled to whole Compensation—Transfer of property Act IV of 1882. See 73, 2. P. W. R. 403 74	
— — — — — S. 3 (a) "Land"—Fishery—Rights if it can be acquired— Incorporal rights not land second acquisition—Pleading, 12 C. W. N. 569=7 C. L. J. 445 285	
— — — — — S. 3 (a)—Fishery Rights "Land" Jurisdiction, 35 Calc. 525 ... 373	
— — — — — Sec. 9-25 (2)—Jurisdiction—Compensation award, 12 C. W. N. 263 121	
— — — — — Ss. 11, 12, 14, 23, 24—Acquisition of land for public purpo- ses by the Government—Principle to be adopted in determining compensation—Proceeding of collection upto his award only admi- nistrative market value definid—Collector's award when final—In- competency of the person interested and of the Civil Court to con- test its validity on the ground of irregularity, P. W. R. 498 ... 74	
— — — — — Section 11—Jurisdiction of Court—Government denying title of claimant, P. L. R. 1907, No. 87... .. 75	
— — — — — Secs. 18, 20, 24—Reference to special Judge—Scope of en- quiry—Parties addition of after reference—Contesting award on matters outside the reference, 12 C. W. N. 90... .. 25	
— — — — — Sec. 18 (1)—Award—Application for reference to the Civil Court—Collector's order refusing judicial order High Courts' po- wer to revise, 12 C. W. N. 241... .. 121	
— — — — — Sec. 23—Compulsory acquisition—Compensation—Market value of land—Passage on the land—Dedication to the public, 10 Bom. L. R. 931 579	
— — — — — S. 23—Compulsory acquisition—Land—Market value addi-	

tional percentage for compulsory acquisition, 10 Bom. L. R. 994 ...	579
— <i>Ss. 25, 27, 54</i> —Appeal lies against an award of costs under s. 25—Section 27 does not allow a pleader's fee to be fixed arbitrarily—Fees to be allowed on the valuation as laid down in the Civil Rules of practice or according to the rules applicable to the particular Court, 31 Mad. 328 ...	580
— <i>S. 30</i> —Refusing parties to court, 10 Bom. L. R. 994 ...	580
—Jurisdiction of collector, 10 Bom. L. R. 994 ...	580
— <i>S. 31</i> —Land acquisition—Compensation—Mortgage—Right of mortgage, 9 P. L. R. 3 ...	166
— <i>Ss. 32, 34</i> —Compensation money paid to Hindu widow—Reversioner's application for reference—Order by Judge on reference directing refund—Appeal—Revision—Civil Procedure Code, sec. 622, 12 C. W. N. 1039 ...	483
— <i>S. 49</i> —"House manufactory or building"—Acquisition of part only required—Whether whole must be purchased, 9 W. N. 1908, 63 = 5 A. L. J. 166 = 30 All. 176 ...	166, 374
— <i>S. 50</i> —Land acquisition—Proceeding apportionment of compensation between landlord and tenant—Presumption of permanency 12 C. W. N. 432 ...	192
— <i>S. 54</i> —Award—Final award—Appeal—High Court, 10 Bom. L. R. 577 ...	328
<i>Land Registration Act (VII B. O. of 1876)</i> —Co-trustee—Application by for registration—Refusal by the revenue authority to direct registration—Suit—Maintability of—Declaration of right to possession, 12 C. W. N. 441, P. C... ..	217
—(<i>VI of 1878, B. O., sec. 55</i>)—Land Registration dispute—Reference to Civil Court—Conditions to be satisfied before making of Mahomedan Law—Dower—Widow's right to hold property till dower paid—High Court—Decision, 12 C. W. N. 16 ...	26
<i>Land Revenue Act (III of 1901), (N. W. P.), s. 142</i> —Purchaser's liability for arrears of Government Revenue—Liability as between purchaser and original co-sharer—Contribution between persons equally liable for payment Contract Act, s. 69, 11 O. C. 279 ...	534
<i>Land Revenue Code (VI of 1879) Sec—84</i> —Annual tenancy—Determination—Notice by landlord, 9. Bom L. R. 1332 ...	27
<i>Land Revenue Code (Bom Act V of 1879) Sec—84</i> —Landlord and Tenant—Annual tenancy—Determination notice, 32. Bom. 78 ...	220
<i>Landlord and Tenant</i> —Right of tenant in the abadi on partition between Co owners not affected—Liability to pay rent, 5. A. L. J. 237 ...	329
—Landlord jointly interested in building—Partition if effects	

a division of the holding, 12. C. W. N. 568	282
———Abatement of rent—portion of which tenant did not obtain possession—Bengal Tenancy Act (VIII of 1885) Secs. 38 and 52, 12 O. W. N. 767	374
———Distraint for larger amount than what is due not void, but will be good for amount actually due, 31 Mad. 22...	219
———Transfer of tenancy—Duty of landlord to grant patta to new tenant, 3 M. L. T. 235—31 Mad. 64...	218
———Right of tenant to release—right of way, (1907, S. J. 44 L. J. 709, W. N. 580, L. T. 62).	III 2
———Surrender of a lease by a tenant—New lease without agreement as to fixtures—Tenants right to remove the fixtures put up during first tenancy, 43 L. J. 91, 12, 4, L. T. 380...	III 10
———Lighting stair case liability of landlord, 1908, W. N. 115, 125, L. T. 32, 43, L. J. 282=52 S. J. 481	III 14
———Ejectment—Permanent or precarious tenure—Presumption as to permanent tenure—Unchanged rent—Transfer of tenure—Recognition by landlord of transfers—Deeds of sale—Construction of—Receipts for rent not expressly describing transferee as tenant of holding, 34 Cal. 902	24
———Inamdar tenant, under—No presumption that tenant has permanent occupancy right, 30 Mad. 502...	75
———South Canara in—No presumption that tenancy is chalgani or mulgeni—Immemorial possession on uniform rent, presumptive, evidence of mulgeni, 30 Mad. 528	121
———Tortious eviction—Suspension of rent—Act—Government Servant authorized by statute—Effect of, 1 Sind. L. R. 244...	534
———Right of Tenant to cut trees other than fruit bearing ones, 4 M. L. T. 187	533
———Notice determining—Tenancy—Denial of landlord's title after suit render previous notice unnecessary, 31 Mad. 161	484
———Partition—Rights of tenants in respect of houses sites in the abadi, 30 All. 282	533
———(Bengal 8 of 1869), s. 6—Kamat land—Right of occupancy—Tenant holding over, 12 C. W. N. 436	218
<i>Landlord and tenant</i> —No charge for second crop on dry land allowable without proof of its propriety by the landlord—Custom—Isolated transactions extending over a few years note—Sufficient proof of customs, 31 Mad. 17	219
———Lease for a term—Provision for renewal—Failure to renew Effect thereof, 4 M. L. T. 315	581

Concurrent leases—Landlord entitled to recover rent only as against second lessee, 30 All 369	581
Forefeiture—Suit for possession—Determination of lease, 4 M. L. T. 221	581
Lease holding over without payment—Tenant at sufferance—Death of lessee—Representatives holding possession, position of—Adverse possession—Suit by lessor for possession—Limitation suit land previously attached in execution of decree against lessor—Claim petition by representatives of lessee—Dismissal of—No fresh suit brought within one year—Effect of in the present suit—Civil Procedure Code, 3 M. L. T. 256 ...	331
Lease—Assignee's liability whether commencing from date of assignment, 2 M. L. T. 36	25
Its non-forfeiture for infringing terms which is not its condition—Landlord and tenant, 35 Calc 485	375
Condition for payment of rent in advance—Suit by purchaser of demised property for rent—Registration—Notice, 30. All 82. ...	286
Covenant by lessor—Land tax, (1907, L. J. 707. L. J. 59. W. N. 235, T. R. 79) ... ..	...(III) 2
Covenants—Lessee of minerals—Action by assigns of surface owner, 1908, W. N. 26, 43, L. J. 56, 25, T. R.... ..	...(III) 10
Underground support—Seams of coal, 43 L. J. 400, 1908, W. N. 161	III 18
Condition for payment of rent in advance—Suit by purchaser of demised property for rent—Registration notice, A. W. N. 1908 13—76	
Lease to withdraw appeal—Duty of the Executing Court—Suit for partition by co-sharer—Alienation by other co-sharers of part of the property, I Sind L. R. 187	934
Legal practitioner—Unprofessional conduct—Attorney appearing for plaintiff and defendant, 8 C. L. J. 16	440
Unprofessional conduct—Suspicion—Mukhtiar—Renewal of license, 12 C. W. N. 919	440
Unprofessional conduct as amended by Act XI of 1896 s. 13cl (6) 14—Pleader right of in declining to 'act'—High Court at what stage of proceedings can inter. ere, 35 Calc. 317	286
S. 13—Professional—Misconduct—Pleader under pecuniary liability to a client attempting to make a composition favourable to himself, with the client A. W. N. 1908=5 A.	167,219
Legal Practitioners Act—Ss. 13 and 14—Pleader—Unprofessional conduct—Refusal of brief for political reasons—Right to refuse—Reasons	

- for refusal of brief for political reasons—Right to refuse—Reasons for refusal if must be stated—Right to move High Court to quash proceedings when called upon to show cause, 12 O. W. N. 781 ... 167
- S. 14—Professional misconduct charge of against pleader by a Subordinate Magistrate—Transfer of the Magistrate before the date of the enquiry into the charge—District Magistrate, order of transferring the charge to the subordinate magistrate since transferred—Validity of—Warrant, issue of, by the Subordinate Magistrate against pleader—Pleader accusing the Magistrate as acting "maliciously" vexatiously and with a vindictive spirit—Whether amounts to improper conduct of pleader, 3 M. L. T. 237 331
- S. 28—Pleader—Agreement to allow legal fees to be set off against money advanced to a pleader by a client, 29 All. 649 ... 77
- Legatee*—Residuary—When estate vests in, 12 C. W. N. 1065 ... 535
- Lessor and lessee*—Contract of lease—Suit for specific performance—Suit or possession of immoveable property, 5 A. L. J. 524 ... 484
- Registered lease—Condition for payment in advance—Validity of payments in advance as against an auction purchaser, 5 A. L. J. 91 ... 168
- Letters Patent Clauses 10, 39*—High Court—Disciplinary jurisdiction—Order suspending a pleader from practice—Leave to appeal Privy Council, 10 Bom. L. R. 21 ... 122
- Cl. 12—Consideration of convenience may be taken into account in granting or refusing leave when part of the causes of action arises within jurisdiction, 30 Mad. 438 ... 27
- Sec. 15—Order refusing to stay execution of a decree—Impossibility of restoring status quo—Whether appeal lies, 3 M. L. T. 307... 245
- Cl. 26—Criminal Procedure Code (Act V of 1898) Sec. 162—Bombay City Police Act (IV of 1902) Sec. 63—Indian Evidence Act (1 of 1872) Secs. 2 and 167—Statement made by a witness to and taken down in writing by a Police officer admissibility in evidence—Confession of accused—Admissibility of, 32 Bom. III LXXX
- Letters of administration*—Joint family—Probate and Administration Act. S 4—Separate property—Daughter right of, in preference to first cousin, (11 O. C. 101)... 332
- Libel*—Privilege—Trade protective society—Information as to position of business men supplied to subscribers for consideration—Volunteering of information—Welfare of society not served by such business—American authorities—Value of, 12 C. W. N.

1058	...	...	...	...	...	...	535
——Responsibility of editor—Publication in his absence, 10 L.							
R. A. 332...	...	...	...	...	...	...	III 6
——Report of official receiver, charges—Against managing director, 3 L. J. 59							
...	...	...	...	...	...	...	III 10
<i>Light and Air</i> —Easement non—user of—how far a release—Transfer of dominant tenement—alienation of easement after attachment							
—Code of Civil Procedure—Sec. 276—License—Damages—Mandatory injunction, 12 C. W. N. 969...							
...	...	...	...	...	...	...	485
——45 decree rule—disturbing the prevailing wind, 1 Sind, L. R. 32							
...	...	...	...	...	...	...	168
——Ancient lights—substantial interference—Nuisance—Reflected light—Mandatory—Injunction refusal of—Delay Damages, 12 O. W. N. 519							
...	...	...	...	...	...	...	287
——Right to—after no years user—agreement to pay for use of light—Cannot sue for obstruction, (1907), W. N. 250=42, L. J. 736=134, L. T. 128, 52, S. J. 114							
...	...	...	...	...	...	...	III 4
Limitation —Acknowledgment—Execution of muchilika by tenant 4 M. L. T. 83							
...	...	...	...	...	...	...	485
——Bar—Representative of judgment—debtor is judgment-debtor within the meaning of s. 258 and must certify adjustment within time fixed by art. 173 (a) of Sched. II of the Limitation Act, 30 Mad 837							
...	...	...	...	...	...	...	124
——Possession—Suit for—Mortgagee purchaser—Formal possession—Period from which limitation runs—Third person in actual possession—Ouster, 7 Cal. L. J. 640							
...	...	...	...	...	...	...	376
——Limitation for execution—In Kathiawar—18 years, 17 K. L. R. 268...							
...	...	...	...	...	...	...	74
——Execution of decree—Application for—Amended decree, in case of, 11 O. C. 22							
...	...	...	...	...	...	...	287
——Limitation—Appeal—Guardian ad-litem—Guardian ad-litem not made a party by appellant—Limitation, A. W. N. 1907, 200							
...	...	...	...	...	...	...	27
——Limitation in suits based on foreclosure—Order absolute time to begin from—Suits for pre-emption based on a foreclosure decree passed on a compromise—Maintainability of—Oudh Laws Act, 1876, Chapter II—Limitation Art. 120—Transfer of Property Act, ss. 86, 87 and 93, 10 O. C. 374...							
...	...	...	...	...	...	...	181
——Suit on a cheque—Post dated, when period begins to run, 125, L. T. 85, 52, S. J. 578...							
...	...	...	...	...	...	...	III 14
——S. 4, 28—Insufficiently stamped plaint presented within Limitation but deficiency made good after expiry of Limitation—							

Effect of first presentation—Institution of suit—Civil C. Code S. 48	
Court fees Act. Ss. 6 and 28, 2 P. W. R. 490.	77
——— <i>S. 5</i> —Appeal—Depositing appeal in the box put up for the purpose—Presentation Sufficient causes, Civil Procedure Code Sec. 511—Important question of law—Punjab Courts Act VIII of 1884	
Section 70. (b) 3 P. W. R. 250	332
——— <i>S. 4</i> —Ground of limitation not taken in memorandum of appeal—Second appeal—Plea of limitation raised for the first time in second appeal—Civil Procedure Code S. 542—Full Bench decision of—Practice, 34 Calc. 941	29
——— <i>Ss. 5, 12</i> —Appeal filed out of time—Bonafide mistake of pleader in calculation—Application for admission granted ex parte by a Division Court—Application for discharge of order by Respondent—Delay costs incurred by appellant, 12 C. W. N. 25 ...	78
——— <i>Ss. 5 and 14</i> —Limitation—Appeal—Delay in filing appeal due to appellant bona fide accepting erroneous legal advice, 29 All. 638	78
——— <i>Ss. 5, 20</i> —Presentation of plaint on opening day after vacation, 9 Bom. L. R. 1329	29
——— <i>Sec. 7</i> —Custom alienation by sonless proprietor—Right of after-born reversioner to object, 9 P. L. R. 74... ..	220
——— <i>S. 7</i> —Arrears of Profits—suit for—when cause of action arose during minority of the plaintiff—Rent Act (oudh) 129 and 132, 11 O. C. 118... f... ..	333
——— <i>Secs. 7-8</i> —Minority of one of several decree holder's Execution of time, 7 C. L. J. 308... ..	220
——— <i>S. 10</i> —Executor when debtor—time does not run, 10 Bom. L. R. 346... ..	333
——— <i>S. 10</i> —Express trust—Trust for a specific purpose—Palla money kept with the bride's father can be recovered at any time 10 Bom. L. R. 540... ..	377
——— <i>Sec. 10</i> —Trust for a specific purpose, meaning of the expression—Express trust—English Law—Palla money deposited with the bride's father—Misappropriation of the sum—Suit to recover the money Limitation, 32 Bom. 394	536
——— <i>Ss. 12</i> —Exclusion of time between—Judgment and signing of decree—Application for copies filed late—Application for leave to appeal in forma pauperis. Court fees paid subsequently, 1 Sind L. R. 71	168
——— <i>S. 12</i> —Time requisite for obtaining copies of judgment and decree, 14 Bur. L. R. 8	221

——— <i>S. 14</i> —Libel—Suit for—Misjoinder of causes of action—Misjoinder of parties—Election—Limitation—"Cause of a like nature" 35 Cal. 728	485
——— <i>Sec. 14</i> —"Unable to entertain" and "unable to decide" distinction between "Some other of the like nature" what is misjoinder of parties and causes of action"—Prosecution with due diligence, 12 C. W. N. 473	221
——— <i>Sec. 14, Art. 143, 144</i> —Action ejectment—Previous issue between Defendants—Original and appellate judgment—Period intervening—Right of action in suspense,	169
——— <i>S. 14</i> —Suspension of right of action, 85 Cal. 209	287
——— <i>S. 19</i> —Acknowledgment—Essentials of, (S. A. 602 of 1906)	IV
——— <i>S. 19</i> —Application of to execution proceedings—Execution of decree—Order in execution proceedings—Effect of, as res judicata—Civil Procedure Code, S. 230, 11 O. C. 220	440
——— <i>S. 19</i> —Suit for redemption of mortgage—Limitation—Acknowledgment of mortgagor's right to redeem, A. W. N. 1908, 228	486
——— <i>S. 19</i> —Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement, 10 Bom. L. R. 374	333
——— <i>S. 19</i> —Acknowledgment—Mortgagor—Narrating the relationship of mortgagor and mortgagee—Mortgagor-admitting its correctness of signature—Effect of the writing, 10 Bom. L. R. 385	333
——— <i>S. 19</i> —Limitation—Acknowledgment of debt—Guardian and minor—Capacity of natural guardian to acknowledge a debt on behalf of his ward, A. W. N. 175=5 A. L. J. 375	378
——— <i>S. 19</i> —Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement—It need not be addressed to any one, 32 Bom. 296	378
——— <i>Sa. 19, 20</i> —Acknowledgment—Part payment—Crediting of interest, 29 All. 778	122
——— <i>S. 20</i> —Part payment of principal and interest, 9 Bom. L. R. 1329	29
——— <i>S. 20</i> —Part payment—Endorsement not in debtor's hand, but only signed by him—When debtor can write, whether such signature is sufficient to waive limitation, 35 Cal. 813	536
——— <i>S. 22</i> —Added plaintiff, proforma defendant joined as plaintiff, 8 C. L. J. 286	537
——— <i>Art. 10</i> —Limitation—Pre-emption—Suit—Property in suit in possession of tenant—Property capable of physical possession, 9 P. L. R. 156	169

————— <i>Art. 10</i> —Pre-emption suit—Berar, 3 Nag. L. R. 193	...	29
————— <i>Arts. 10 and 20</i> —Limitation—Pre-emption—Suit—Mortgage by way of conditional sale—Punjab Laws Act IV of 1862, S. 12—Joint holding—Bhai nazdiki—Co-sharers, 8 P.L.R. 1907, 84	...	29
————— <i>Art. 11</i> —Ss. 278, 283, C. P. Code—Order dismissing claim for default not an order made after investigation and need not be set aside within one year under Art. 11 of Sch. II of the Limitation Act, 31 Mad. 5	... ..	221
————— <i>Art. 11</i> —Civil Procedure Code, S. 335—Purchasers at Court sale—Obstruction to delivery of possession—Obstructor manager of joint family consisting of minors—Partition between obstructor and minors—Allotment of the property to the share of minors—Withdrawal of the obstructor by default without notice to minors—Design on the part of the obstructor—Order awarding possession to purchasers—Suit by minors to recover possession—Limitation 32 Bom. 404	... ..	537
————— <i>Art. 11</i> —Suit to set aside order dismissing an application under S. 278, C. P. Code for default, 3 M. L. T. 106	... ..	122
————— <i>Arts. 11 and 12</i> —Civil Procedure Code, S. 332—Suit under S. 332, brought more than a year after the order passed under the section not barred. 10 Bom. L. R. 749	... ..	486
————— <i>Art. 12 (a)</i> —Scope of, 6 C. L. J. 719	... ..	123
————— <i>Art. 18</i> —Suit by heir for recovery of moveable property deposited by owner, 9 P. L. R. 299	... ..	406
————— <i>Art. 29</i> —Moveable property wrongfully seized under legal process—Limitation when begins to run, 4 Nag. L. R. 49	... ..	334
————— <i>Art. 29</i> —Attachment before judgment—Suit for compensation—Limitation—Terminus a quo, 29 All. 615	... ..	30
————— <i>Art. 31</i> —Suit for share of mesne profits wrongfully received—Jurisdiction 8 M. L. J. 88...	... ..	289
————— <i>Arts. 36, 39 and 49</i> —Fictitious landlord and tenant—Distraint—Removal of crop—Suit for damages—Trespass—Conversion, 12 C. W. N. 1090	... ..	538
————— <i>Art. 44</i> —'Sale' in art. 44 not confined to transfer of absolute ownership only—Finding in previous suit of the invalidity of a sale does not dispense with the necessity of suing to set aside such sale, 30 Mad. 393	... ..	30
————— <i>Arts. 44 and 144</i> —Joint Hindu family, guardian of a member belonging to—Transfer by mother purporting to act as guardian—Suit for possession brought by a minor to recover property alienated without necessity limitation for, 10 O. C. 307	... ..	169

— <i>Art. 45</i> —Alluvial accretion—Settlement of khas mehal land—Suit to set aside an order refusing settlement, Reg. IX of 1825, 12 C. W. N. 910	441
— <i>Art. 49</i> —Government promissory note held by Defendant for plaintiff—Wrongful disposal of notes—Pledge—Subsequent demand and refusal—Wrongful detention when commences, 12 C. W. N. 1010	436
— <i>Arts 49 and 120</i> —Wrongfull possession—Wrongfulness declared by the Court—Stating point for limitation, 3 M. L. T. 324	334
— <i>Arts. 59 and 60</i> —Suit to recover money deposited on current account—Loan—Deposit, 29 All. 773	123
— <i>Arts 61 and 83</i> —Suit on bond to recover money of which a third party has in fact had the benefit—Compromise of suit by heirs of obligor—Suit to recover money paid under compromise, 29 All. 627	79
— <i>Arts. 62, 95, 97</i> —Suit to recover money obtained by deceitful—Mis-representation does not fall within art. 62 or 97 but within art. 95—Starting point of limitation, 31 Mad. 230=4 M. L. T. 80	487
— <i>Arts. 62, 120 and 121</i> —Limitation—Jagir—Suit to establish right—Suit for recovery of Jagir money, P. L. R. 1907, No. 89	79
— <i>Arts. 62, 120</i> —Suit to recover money received under a transaction which is an absolute nullity governed by art. 62 and 120 and cause of action arises on the date of payment, 30 Mrd. 454	31
— <i>Art. 75</i> —Limitation—Bond—Instalments—Power to sue for whole amount on default of payment, 30 All. 123=1908 A. W. N. 36	123, 334
— <i>Art. 85</i> —Acknowledgment—Signature of accounts, 4 M. L. T. 77	487
— <i>Arts. 89, 116, 132</i> —Principal and agent—Account—Suit for—Limitation—Charge upon immoveable property—Contract under registered document, 35 Calc. 298=12 C. W. N. 820	288, 441
— <i>Art. 91</i> —Parties not in Pari Delicto—Restoration of Property, 1 Sind. L. R. 21	170
— <i>Art. 91</i> —Suit for collection of a deed—Suit for a declaration that the transaction evidenced by the deed was fictitious, A. W. N. 1908, 156	379
— <i>Arts. 91, 144</i> —Benami transaction—Fraud—Deed—Creditor—Equitable mortgage—Suit—Deed declared inoperative and fraudulent, 35 Calc. 551=12 C. W. N. 562	289, 441

— <i>Art. 91</i> —Suit for cancellation of a deed—Suit for a declaration that the transaction evidenced by the deed was a fictitious, 30 All. 375	582
— <i>Art. 95</i> —Knowledge—Meaning of, 18 Kat. L. R. 167	532
— <i>Articles, 96, 120</i> —Fraud must be fraud on party to the decree or transaction <i>Art. 120</i> —Applies to suits by reversioner for relief against fraudulent decree brought about by widow—Cause of action accrues when injury done to—reversion Civil Procedure Code S. 244 Does not apply when decree itself impugned—Res-judicata 30 Mad. 402	32
— <i>Art. 97, 116</i> —Vendor and purchaser—Breach and covenant—Refund of consideration, (5 A. L. J. 480)=1908, A. W. N. 185	442
— <i>Art. 105</i> —Effect of, 5 All. L. J. 192	222
— <i>Art. 106</i> —Partnership assets realized subsequent to dissolution—Causes of action, 1 Sind, L. R. 169	222
— <i>Arts. 106-120</i> —Suit by expelled partner for account, 12 C. W. N. 455...	222
— <i>Arts. 110-116</i> —Royalty—Suit for, 12 C. W. N. 724	335
— <i>Arts. 111, 132</i> —Unpaid vendor's lien—Statutory charge—Transfer of Property Act. Sec. 85—payment of prior incumbrance by vendee—Liability of vendee, 5 A. L. J. 243=1908 A. W. N. 71=30 All. 122	222, 289, 379
— <i>Art. 116</i> —Contract in writing registered—Contract signed by only one party, but acted on by both covenant—Remote consequence of breach of contract—Damage, 35 Calc. 683...	488
— <i>Art. 116</i> —Limitation—Suit for compensation for the breach of a contract in writing registered, A. W. N. 1908, 160=4 A. L. J. 379	443
— <i>Art. 118</i> —Adoption—Suit for possession of immovable property in which defendants sets up adoption as defence in support of right to hold property, 9 P. L. R. 38	124
— <i>Art. 118</i> —Scope of—Suit to recover property, 2 P.W.R. 463	80
— <i>Arts. 118, 141</i> —Invalid adoption, 3 P. W. R. 213	335
— <i>Art. 119</i> —Period of Limitation applicable to suits where factum and also validity of adoption is denied, 32 Bom. 7	222
— <i>Art. 120</i> —Claim by mortgagee in possession to be declared owner—Starting point of limitation—No right to maintain a suit for possession when plaintiff is already in possession, 2 P.W.R. 373	380
— <i>Art. 120</i> —Hindu Law—Alienation by widow—Gift to daughter's sons—Suit to declare invalidity of alienation—Suit	

brought during lifetime of a daughter, 3 M. L. T. 319	...	380
——— <i>Arts. 120 and 144, S. 23</i> —Suit for declaration and injunction—Right to take water—Continuing wrong, 1 Sind L. R. 228	...	380
——— <i>Art. 123</i> —Scope of, 10 Bom. L. R. 210	...	289
——— <i>Art. 125</i> —Hindu Law—Alienation by a Hindu widow—Suit by reversioner, 12 C. W. N. 857	...	443
——— <i>Art. 132</i> —Agra Tenancy Act, S. 162—Suit to recover arrears of malikana allowance—Civil and Revenue Courts—Jurisdiction, A. W. N. 209	...	443
——— <i>Arts. 132, 137</i> —Suit on mortgage bond to enforce payment of amount due by sale of mortgaged property—Suit on mortgage in English form for foreclosure or sale—Transfer of Property Act, Ss. 58, 88, 100, 30 Mad. 426	...	32
——— <i>Arts. 134, 144</i> —Application of 'Purchaser'—Meaning of—Mortgagee not a purchaser, 9 Pun. L. R. 102	...	381
——— <i>Arts. 135, 132, 144</i> —Suit for possession of property mortgaged by way of conditional sale—Starting point for limitation, 3 Pun. W. R. 243	...	381
——— <i>Arts. 135, 144</i> —Regulation XVII of 1806—Mortgage by conditional sale—Adverse possession—Cause of action, 8 P. L. R. 1907, 72	...	32
——— <i>Art. 136</i> —Mortgage suit by purchaser of equity of redemption—Punjab Court's Act XVIII of 1884, S. 40 (1) (b)—Jurisdiction—Further appeal—Value of property—Suit for redemption—Alienation—Necessity sale, P. L. R. 1907. 100	...	80
——— <i>Arts. 135, 141 and 144</i> —Suit for possession of immoveable property—Suit by reversioner against tenant will holding over the estate of a widow, P. L. R. 1907, 91	...	80
——— <i>Art. 139</i> —Lessor and lessee—Adverse possession—Non-payment of rent if creates adverse possession—Lessee holding over, 7 Cal. L. J. 615	...	381
——— <i>Arts. 141, 144</i> —Limitation—Adverse possession—Claim for possession of a Hindu, leaving widow and other heirs abandoned by widow starting point of limitation, 3 Pun. W. R. 229	...	382
——— <i>Art. 142</i> —Ejectment suits, (S. A. 401 of 1904), ...	IV 2	
——— <i>Art. 142, 144</i> —Suit for possession—Duty of plaintiff, 14 Bur. L. R. 156	...	443
——— <i>Arts. 144, 139</i> —Landlord and tenant—Transfer of Property Act, s. 116—Representatives of a tenant by sufferance a trespasser and, cannot without his consent be converted by the lessor into a yearly or monthly tenant—Suit for possession against		

- such representative governed by art. 144 and not art. 139, 31 Mad. 63... .. 448
- Art. 144*—Suit for possession under an Arthamulgeni lease governed by Art. 144, 31 Mad. 51 289
- Art. 144*—Stating point of—Adverse possession—Suit by landlord to eject a lessor holding under widows of an occupancy tenant—Mutation of names—Direction to bring civil suit by revenue authorities of no effect, 3 P. W. R. 374 382
- Art. 148*—Adverse—Possession—Immoveable property—Right to Birth—Exclusive enjoyment by mortgagee, 9 P. L. R. 533 488
- Art. 148*—Mortgage—Redemption—When the right to redeem accrues, 18 Mad. L. J. 235 382
- Art. 149*—Adverse possession—Gift—No registered instrument—Attornment by tenant for a term to the donee under the invalid gift—Possession if donee whether adverse from date of attornment or from date of termination of lease, 4 M. L. T. 327. ... 582
- Art. 152 (5)*—Civil Procedure Code, S. 248—Date of issuing notice, A. W. N. 1908, 245... .. 582
- Article 164*—Civil Procedure Code—Section 108, and 208 Ex parte degree—Application to set aside, 8 P. L. R. No. 79 ... 32
- Art 164, 169*—Scope of, 30 Mad. 335 124
- Art. 169*—Applicability—No Service on respondent service without declaration under sec. 82 C. P. C. no good service, 18 M. L. J. 96 290
- Art. 172*—Application for enforcement of payment of costs by a solicitor against his client is not an application under the Civil Procedure Code Art. 178 applies only to applications under Civil Procedure Code. H. C. Rule, No. 859, 32 Bom. 1... .. 223
- Arts. 173, 179*—Revenue recovery Act (Madras) Act VIII of 1865, Ss. 86, 40. Applications under S. 40 of the Revenue Recovery Act of Civil Courts are for limitation governed by Art 178 of the Limitation Act. 31 Mad. 24... .. 224
- Arts. 173a, 179*—Application in accordance with Law—Where a Court passes a decree for sale of property and the place where such property is situated is transferred to the jurisdiction of another Court former Court may still execute decree—Application made to such Court to transfer decree to the latter will save limitation bar—Representatives of judgment-debtor within the meaning of s. 258 and must certify adjustment within time fixed by art. 173A of Sch. II of the Limitation Act, 30 Mad. 837 124
- Art. 175 (c)*—Second appeal—Application to bring in

legal representatives of deceased respondent, in second appeal— —Code of Civil Procedure Code, s. 587, 582—Abatement—Death of one of several respondents pending appeal, 6 C. L. J. 775— 34 Calc. 1020	33
— <i>Arts 175 (c), 178</i> —Limitation—Application for bringing on record the representatives of a deceased respondent in second appeal 10 Bom. L. R. 509	335
— <i>Arts. 178, 179</i> —No limitation as long as proceedings initiated by decree-holder are pending—Fresh application barred if pre- sented more than three years after removal of bar, 3 M. L. T. 319 —31 Mad. 71	290
— <i>Arts. 178, 179</i> —Execution of decree—Decree as originally framed incapable of execution—Amendment of decree, 5 A.L.J.403	383
— <i>Art. 178</i> —Date of confirmation of sale—Starting of Limi- tation for execution, 4 A. L. J. 576	488
— <i>Art. 178</i> —No limit for application for foreclosure of mort- gage...Regulation XVII of 1806—Revision on point of Limitation starting point of Limitation for declaratory—Suit by mortgagee to be declared owner, 3 P. W. R. 387	444
— <i>Arts. 178, 179</i> —Execution of decree—Decree as originally framed—Incapable of Execution—Amendment of decree—Limita- tion, A. W. N. 1908, 191	444
— <i>Arts. 178, 179</i> —Execution—When prior application to be considered pending, 18 M. L. J. 46	228
— <i>Art. 179</i> —Execution of decree—Appeal—Appeal not pass- ed, 30 All. 385	582
— <i>Art. 179</i> —Execution of decree—Period of Limitation—When begins to run—Original or appellate decree—Civil Procedure Code, S. 230—Decree modifying original decree, 7 Cal. L. R. 305 ...	220
— <i>Art. 179</i> —Application for time—Step in aid of execution— Previous application barred—Notice on judgment-debtor—Estoppel, 8 C. L. J. 193	489
— <i>Art. 179</i> —Execution of decree—Application—Continuation of previous proceedings in execution, A. W. N. 1108, 227 ...	489
— <i>Art. 179</i> —Application in accordance with law—Application by representative of decree-holder, whose name is not brought on application in accordance with law—Civil Procedure Code, Ss. 232, 365, 366, 31 Mad. 76	384
— <i>Art. 179</i> —Execution of decree—Appeal—Appeal not passed— Terminus a quo, A. W. N. 1903, 161... ..	382
— <i>Art. 179</i> —Execution of decree—Defective application for	

- execution—Step in aid of execution—When effective—Meaning of the words “in accordance with Law—No effect of issuing notice, 8 P. W. R. 325 ... 383
- Art. 179*—Instalment decree—Failure to pay instalment—Waiver—Payment of interest—Limitation Act, article 179, 1 Sind L. R. 252... 588
- Art. 179*—Step in aid of execution—Application to bring on record—Representative of deceased judgment-debtor is a step in aid of execution—Civil Procedure Code, Ss. 232, 368—Application under S. 368, not prohibited by S. 232. 30 Mad. 541 ... 125
- Art. 179*—Execution of decree—Application in continuation of previous proceedings in execution A. W. N. 1908; 89... 125
- Art. 179, Clause. 2*—Execution of decree—Joint decree—appeal against some of the Judgment—debtors in respect of the dismissed portion of claim—starting of limitation period against other judgment debtors, 9 P. L. R. 21... 171
- Art. 179, Cl. (4)*—Step in aid of execution application not in accordance with law, 17 M. L. J. 15... 171
- Art. 179, Cl. 4*—Application in recordance with law—Step in aid of execution C. P. C. S. 232—Application by the transferee—Decree holder to be recognized as such, 18 M. L. J. 25 ... 274
- Art. 179, Cl. (4)*—Civil Procedure Code S. 232—Application by transferee decree-holder to be recognized as such is a step in aid of execution in accordance with law, 31 Mad. 234-4, M. L. T. 72... 489
- Art. 179 (4)*—Execution of decree—Limitation application to take some step in aid of execution—Payment of process fees, 5 A. L. J. 258-30 All. 159 ... 384
- Art. 179 (4)*—Application to take some step in aid of execution—Payment of process fees, A. W. N. 1908, 74... 290
- Art. 179, (Cl. 4)*—Step in aid of execution—Application for order absolute—Defective and unverified application, T. P. Act Sec. 89, 17 M. L. J. 596 ... 125
- Art. 179, (4)*—Step in aid of execution—Application for execution to one court to transfer the decree to another under S. 223 C. P. Code, 2 M. L. T. 466 ... 80
- Art. 179, Clause 5*—Decree—Execution—application for execution—Code of Civil Procedure Sec. 248 notice date of the order, 5 A. L. J. 524 ... 489
- Art. 179 (6)*—Decree directing maintenance from date of plaint is a decree within clause 6—Res-judicata—Erroneous decision

- on question of law—No bar, 30 Mad. 504 80
- Local Boards Act (V of 1884)*—Duty of maintaining road so—Im-
provement of tunnels and culverts under the road—Damage to
adjacent owners, 18 M. L. J. 91 385
- Lottery*—Gaming Act 1892—Limerick—Competition, 52 S. J. 599 III 18
- Lunatic*—Guardian defects—Sale of lunatic's property by mother
and wife for benefit of lunatic, A. W. N. 1908, 220 490
- Contract by lunatic not known to the other contracting party
—General presumption of—insanity—rebuttal of, 10 Bom. L. R.
1004 582
- Act (XXXIV of 1858)*—Remuneration to a Committee—
Courts' jurisdiction to pass the order next of kin of lunatic not
entitled to be heard on the application—Lunatic when save can
impeach the order, 10 Bom. L. R. 772... .. 490
- Madras Abkari Act, (1 of 1882), sec. 62*—Peon—Words "Abkari"
officer, 4 M. L. J. 455 CXXXXI
- Madras Act VIII of 1885 s. 7*—Acceptance of—Muchilika—Effect
of, 3 Mad. L. T. 380 330
- Madras City Municipal Act (III of 1904), sch. VI cl. 1*—"Propel-
led", 18 M. L. T. 149 290
- Ss. 322 and 323*—Storing iron—Conviction under sec. 323—
Legality thereof, 4 M. L. T. 321 583
- (*3 of 1904*) s. 176, sch. V—"Capital"—Meaning of—Statutes
—Interpretation—Principles, 18 M. L. J. 849... .. 533
- Mamlatdar's Court Act, (Bombay Act III of 1876 and II of 1906)*
—General Clauses Act, (Bombay Act 1 of 1904), sec. 7—Bombay
Act II of 1906, sec. 23—Proceedings commenced under the old
Act—Right of appeal given by the new Act can be no avail—Right
of appeal is not a matter of procedure, 10 Bom. L. R. 527 386
- Madras Darkhast Rules*—Darkhast of land within port—limits—
Grant without consulting presidency—Port officer mere irregularity—
Grant not set aside on appeal within time—Binding character of,
18 M. L. J. 62 224
- Madras District Municipalities Act, (Madras Act IV of 1884), ss.*
3, 27, 169, 263—License not required under s. 169—When veran-
dah or other covering created within the limits of adjacent pro-
perty, 31 Mad. 181... .. 445
- S. 26*—Power of Municipality conferred by the section
wider than that conferred by Regulation VII of 1817 on Revenue
Board—Municipality has under s. 26 of Act—Powers of actual ma-

- nagement and can maintain suit on bonds in the name of the superseded trustee without obtaining an assignment, 31 Mad. 111 ... 291
- Ss. 47, 66 (1)*—Tax on houses, a yearly tax—When ownership arises after assessment, such owner liable for whole tax and not only for instalments accruing due after acquisition of ownership, 30 Mad. 423 ... 33
- Sec. 170*—External roofs, 1 Cr. L. R. 390 ... 81
- Ss. 86 and 88*—Registration Court—Obliteration of number on the axle and painting it on another—Illegal collection of toll municipality, not liable, 18 M. L. J. 377 ... 539
- S. 179*—External roofs, 2 M. L. T. 429... 171
- Madras Municipal Act, (III of 1904), Act II of 1904 sec. 5*—“Capital”, 3 M. L. T. 400 ... 445
- Madras Land Act, ss. 4, 11*—Res judicata—Contract to pay tax on improvements—legal—Previous decision in summary suit binding in subsequent suits—Poramboke water in—Water poramboke lands not sircar water—Appeal—Powers of Court in appellate Court may by consent order—Trial on issues not raised in appeal, 30 Mad. 510... ..
- S. 11, cl. 2, 3, 4*—Proviso—Contract to share benefit of tenants’ improvement—Title to waste lands—Judgment in previous suit—Evidence—Decision of a Revenue Court as to propriety of patta—Res-judicata—Appeal—Effect of ... 82
- Ss. 41, 43, 69*—‘Judgment’—Decision of Collector setting aside on order for ejectment under s. 41 is a ‘judgment’ and applicable as such, 30 Mad. 473 ... 83
- S. 85*—Section 85 empowers receivers to sue under the Act and also makes them liable to be sued without leave of Courts 2 M. L. T. 455 ... 83
- Madras Local Boards Act, (V of 1884), s. 95*—Act throws on Local Boards the duty of making necessary improvements in roads by necessary implication—Board not liable for damage accused by such works when not negligently carried out, 31 Mad. 117 ... 291
- Secs. 162 (c) (d), 165*—Contract Act, 1872, sec. 74—Deed of agreement—Construction of civil suit without criminal prosecution—Penalty—Suit to recover—Limitation Act, arts. 6, 68, 115 2 M. L. T. 461 ... 81
- Madras Rent Recovery Act (Act VIII of 1865)*—Exchange of patta and muchilika not necessary between zamindar and inamdar to enable former to take proceedings under Act, 30 Mad. 993=2 M.

- L. 62 82
- (*II of 1864*) *Ss. 36, 40*—Sale of immoveable property under
—Possession, application for, by purchaser—Limitation Act, arts.
178 179, 3 M. L. T. 19 83
- (*VIII of 1865*), *Ss. 38 and 39*—Sale on excessive demand
illegal—Institution of Civil Suit after taking summary proceedings
—No bar to proceeding with the latter—Limitation Act, art. 12—
No bar to defendant in possession—Pleading—Invalidity of sale, 30
Mad. 444 88
- Rent charge for second crop on dry land—Irrigation not pro-
vided by zamindar—Liability of tenant to pay custom—Plea of,
3 M. L. T. 101
- S. 11*—Agreement to pay special rate for particular crops is
not an enhancement of rent and is not invalid under *S. II, 31*
Mad. 10 225
- Madras Rules - Practice* (*Madras*) Rule 463—Mortgage—Decree—
Petition by decree-holders for decree—Absolute not verified—
Whether substantially in accordance with law so as to save limita-
tion, 3 Mad. L. T. 254 384
- Madras Salt Act, sec. 87*—Contract to transport Government Salt—
Deduction of certain amount due—Suit to recover the amounts
whether statutory bar, 4 M. L. T.OXIX
- Madras Town Nuisances Act, S 3 (6)*—Exposing fish for sale—
Whether an offence, 0 M. L. T. 400=2 Cr. L. Rep. ... 445, CXXXI
- (*3 of 1889*) *Ss. 31 cl (10)*—Gambling on pial of private
house, 3 M. L. T. 137XXXI
- Mahabrahmani*—Offerings—Contract with respect to—Representa-
tives of parties to the agreement, effect on—Immoveable property—
Transfer of non existent property 446
- Mahommadan Law*—Alienation—Sale by sonless proprietor—Gilani
Sayads of Masania village—Batala Tahsil of Gurdaspur District—Ne-
cessity aquiqua ceremony of deceased son, 9 P. L. R. 1908, No. 8 ... 110
- Divorces*—Marriage—Contract option of Talak given to wife
in exercise of—option—Delay. Effect of when not unreasonable (12
C. W. N 907... .. 446
- Dower*—Wife's death in husband's lifetime—Deferred dower
—Right accrues to heirs of wife after her death—Cause of action
not joint—Suit by one heir other heirs, necessary parties, 12 C.
W. N. 89... .. 84
- Dower*—Relinquishment—Acceptance by the heirs, 10 Bom.

L. R. 764...	490
— <i>Gift</i> —Hiba bil mushaa—Possession, 30 All. 250 ...	490
— <i>Gift</i> —Mushaa gifts of undivided shares in companies and shares in Freehold property in Rangoon—Whether law of mushaa applicable to Mahomedans residing in Rangoon—Death bed—Gifts—Gifts made not under sense of imminence of death, 35 Calc. 1 ...	292
— <i>Gift</i> —Hiba bil mushaa—Possession A. W. N. 1908, 104 ...	293
— <i>Gift</i> —Usufruct—Ariat, 30 All. 309 ...	541
— <i>Gift</i> —Validity of deed of gift—Marz-ul-maut Death illness, what constitute apprehension of death—Concurrent judgments on fact—Privy Council practice of, 35 Calc. 271 ...	292
— Validity of gift—Margal maut—Right test to be applied—Practice when concurrent findings of facts are under consideration, 10 Bom. L. R. 50=12 C. W. N. 244=7 C. L. J. 122...	126
— Inheritance—Right of Children by 5th wife to inherit their father's estate—Marriage with a fifth woman invalid but not void, 9 P. L. R. No. 25...	225
— <i>Rhojas</i> —of Lahore—District Succession—Customary right of representation Onus—Duty of Court in inquire Custom Act IV of 1872 S. 5—Relevancy of instances in other localities, 2 P. W. R. 405	67
— <i>Pre-emption</i> —Ceremonies due performance of—Falabi istishal—Reversal by high Court of decision of First Court on question of fact—Withdrawal from court by pre-emptors of money paid by purchaser to redeem mortgage on property sold—Waiver of right of pre-emption, 35 Calc. 402...	386
— <i>Pre-emption</i> —Shafi-i-Khalit, A. W. N. 1908, 239...	583
— <i>Succession</i> —Shias—Childless widow—Rights of widow in possession in lieu of dower—Transfer of Property Act Section 6 (d) Mortgage—Advance possession, 29 All. 640 ...	84
— <i>Wakf</i> —Proof of by user alone, 3 P. W. R. 203 ...	387
— <i>Wakf</i> —Shares in a limited company, 9 Bom L. R. 1837 ...	34
— <i>Wakf</i> —Grave yard C. P. Code Ss. 80 and 539 suit by members of a community, 9 P. L. R. 218...	226
— <i>Wakf</i> —Evidence of—Possession as owner or custodian—Onus A. W. N. 1908, 149 ...	335
— <i>Will</i> —Shias—Power of devise amongst shias, A. W. N. 1908, 55=5 A. L. J. 169=30 All. 153...	171, 387
— <i>Worship</i> —Amil-bil-hadis—Hanafi sect—mosques—Right of worship by different sects—Dedication to particular sect, 35 Cal. 294 ...	292
<i>Main insurance</i> —General average, Mamel v. P. & Co. Steam N.	

Ca. 1908, W- N. 110	IV 7
<i>Majority Act (IX of 1876) Sec. 3</i> —Period of minority on vacation of an order does not extend to 21 years—Guardians and Wards Act Secs. 47, 48, 31 Bom. 590	128
<i>Malbar Compensation for Tenant's Improvements Act (VII of 1887) s. 7, 18 (Act 1 of 1900)</i> —Scope of—Improvements effected after 1886 in virtue of contracts made prior to 1886, 18 M. L. J. 98—3 M. L. T. 291	293
<i>Malbar Law</i> —Decree against Karnawan—Subsequent division into Towahi Procedure, 18 M. L. J. 132	293
——— <i>Otti-holder's right of pre-emption</i> —Nature of such right of election and not a right to veto—Right of pre-emption cannot be enforced by counter—Claim by otti-holder in transferee's suit for redemption—Variation between pleading and proof—Plaintiff failing to prove plaint—Mortgage may be given a decree on mortgage admitted by defendant, 30 Mad. 388...	34
——— <i>Marumak Kathyam Law</i> —Gift by Mahomedan husband a wife and children governed by Marumakathyam law—Estate taken, 18 M. L. J. 16	172
<i>Malbar Tarwad</i> —Decree against Karnavanas representing tarwad—Division of tarwad into taveris subsequent to decree and prior to execution proceedings—Members not represented by Karnavan of the original tarwad not bound by proceedings in execution, 3 M. L. T. 189	172
<i>Malicious prosecution</i> —Civil Procedure Code, sec. II—Jurisdiction of Civil Court—Cause of action—Municipal Committee—Suit against, 8 P. L. R. 1907, No. 78	35
——— <i>Suit for damages</i> —Prosecution started by Police upon information for defendant—Real prosecutor liable, 12 C. W. N. 817	447
——— <i>Suit for—Information to police</i> —Prosecution by police, instigated and conducted by private individual—Real prosecutor liable—Question of fact—Malice, 12 C. W. N. 1017...	539
<i>Malikana</i> —Claim for—The Land Registration Act (VII of 1876), B. C. S. 78 which is not a claim for rent, 8 C. L. J. 300	540
<i>Mamlatdar's Courts Act (Bom. Act III of 1876), sec. 4</i> —Mamlatdar's Courts Act, (Bom. Act II of 1906), sec. 5—Mamlatdar's Court—Suit for a possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed statute, 31 Bom. 545	35
——— <i>Ss. 7 and 23</i> —Mamlatdar's Court Act (Bom. Act III of 1876) S. 5—General Clauses Act (I of 1904) S. 7—Repeal of the	

- Mamlatdars Court Act** (Bom. Act III of 1876) by the Mamlatdar's Court Act (Bom. Act II of 1906)—Suit commenced under the former Act—Effect of the latter Act, 32 Bom. 337 ... 447
- S. 19, cl. (b)*—Possessory suit—Trespasser dispossessing the tenant during the duration of tenancy—Landlord suing to recover possession within six months from the determination, 32 Bom. 46 226
- Market**—Right of zamindar to establish a market on his own land—Regulation No. XXII of 1793—Regulation No. VIII of 1822, S. 9. 29 All. 740... .. 226
- Marriage**—Pre-emption of its existence arising from cohabitation with habit and repute—Conditions—Precedent to its application—Practice—Point not submitted to either courts in India raised before the Privy Council, 10 Bom. L. R. 41—12 C. W. N. of 220... 128
- Judicial separation, 52 S. J. 282 ... (III) 10
- Abatement of suit—Suit for dissolution of marriage—Death of plaintiff—Respondent—Damages abatement of claim against co-respondent, 8 P. L. R. 1907, 63 ... 35
- Presumption of marriage from co-habitation with habit and repute in Siamese Shan States—Presumption different in different countries—Proof of repute—Entry of 'wife' in consular—Certificate of nationality given to British subjects in Siam—New point taken on appeal, 35 Cal. 232... 388
- Nullity of—Deceased wife's sister—Illegitimate child—Custody of the child—Maintenance, 35 Cal. 381 ... 337
- Maramat Grant**—Not an under—Proprietary right—Rent Act, Oudh S. 3, 10 O. 240 ... 492
- Marumakkattayam Law**—Gift by woman—Governed by such law—Effect of, 31 Mad. 223 Mad. L. T. 82 ... 492
- Master and Servant**—Agreement with native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for a criminal act done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of S. III—Indian Emigration Act (XXI of 1883) amended by Act X of 1902, Ss. 6, 107, III, 31 Bom. 611... 128
- Master liable for agreements entered into on his behalf by his servant in violation of S. III—Protector of Emigrants has power to impose reasonable terms before he can issue permission—Applied for, 31 Bom. 611 ... XXVIII
- Covenant in restraint of business, wrongful dismissal, 1908, W. N. 86; 43 L. J. 78; 124 L. T. 334; 52 S. J. 240 ... III 10

Garage firm, supplying driver—Driver's negligence, 52 S. J. 116	III 4
<i>Master and Pupil</i> —Authority to inflict corporeal punishment, 1908, 24 T. R. 67; 52 S. J. 59	III 4
<i>Merger</i> —Decree in civil suit for rent bars subsequent summary proceedings—Rent Recovery Act by distress—Rent Recovery Act Madras Act VIII of 1865, S. 39, 30 Mad. 495... ..	85
Under proprietor acquiring superior proprietary rights, 11 O. C. 183	337
<i>Mesne-profits</i> —Assessment—Zerail land—possession before trespass—Character of—assessment upon produce—Net produce to be considered customary and competition rent, 12 C. W. N. 656	389
Application to determine—Dismissal for default. Fresh application—Limitation striking off and dismissal of application difference between—Decree—execution of application, 7 C. L. J. 301	227
Practice as to, 12 C. W. N. 393... ..	172
Suit for—Limitation Act, Ars. 109, 120—Applicability of "when the profits are received" in Art. 109, meaning of, 8 C. L. J. 181... ..	492
<i>Minor</i> —Bond of Guardian—Liability of minor—Bond keeping alive debt incurred for necessities when binds minor's estate—Personal liability of minor, 35 Cal. 320... ..	275
Fraudulent Representation of full age—Loan 24 T. R. 801... ..	III 20
Principal and agent—Accounts—Advance made by agent—Benefit of minor—Application of advances, 7 C. L. J. 89	129
Removal of certificd guardian—Effect on attainment of majority by—Suit entitled—Without next friend—Effect of, Irregularity—Civil Procedure Code, ss. 440 and 578, 11 O. C. 159,	338
<i>Misjoinder</i> —Amendment of plaint—Original plan within time, 12 C. W. N. 990	287
<i>Money Lender's Act, 1900</i> —Suit by—Jurisdiction, 124 L. T. 198 ... (III) 7	
<i>Mortgage</i> —Application for foreclosure—Nature of—Plaint. 8 Nag. L. R. 246... ..	37
Mortgage by way of conditional sale—Notice—Demand made before expiry of term of mortgage, 8. P. L. R. 1907, 81	86
Colourable transaction—Hindu Law—Widow—Management of estate by her son-in law—Mortgage on the estate to the son-in-law, consideration, 3 Mad. L. T. 285	389
Construction of decree on mortgage—Decree under Ss. 86 and 88—Transfer of Property Act "Future interest"—Power to	

give interest after date fixed for payment—Interest to date of realization of mortgage debt, 35 Cal. 221...	294
—Decree—Order for sale—Costs—Costs if can be recovered from the mortgagor personally—Transfer of Property Act. S. 90, 12 C.W. N. 364...	175
—Conditional decree for foreclosure—Refusal to make decree absolute, 4 Nag. L. R. 55 ...	245
—Decree, form of—Interest rate of—Suit by puisne mortgagee for redemption, after decree previously obtained by prior mortgagee without impleading puisne mortgagee, 18 M. L. J. 355 ...	492
—Mortgage by a Hindu without legal necessity—Destruction of property by fire—Mortgagee's rebuilding the property—Suit by reversioner at widow's death to recover possession of property—Mortgagee not entitled to claim repairs or to remove the construction before delivering possession, 32 Bom. 32 ...	227
—Mortgagee accepting deed of further charge from some of the mortgagors, effect on integrity of original mortgage, 11 O.C.73	338
—Non-receipt of full consideration—Postponing payment of a part of mortgage—money till mutation of names—Complete transaction, 2 P. W. R. 117 ...	228
—Mortgage of ancestral property by Manager—Sale of mortgaged property in contravention of S 99 of the Transfer of Property Act—Alleged adverse possession by a mortgage, A.W.N.1908	70
—Prior and subsequent mortgagees—Decree for sale in suit by subsequent mortgagee prior mortgagee not being a party—Prior mortgaged binding at sale without mentioning his own incumbrance—Subsequent suit for sale by prior mortgage—Estoppel, A. W. N. 1907, 278 ...	35
—Priority—Transfer of Property Act (IV of 1882) sec. 78—Gross negligence. 4 M. L. T. 217 ...	583
—Mortgage Property purchased by vendees subject to an unregistered mortgage—Pre-emptors bound to take the property subject to the mortgage, 30 All. 130 ...	399
—Redemption by purchaser—Sale held invalid—Right to recover the amount paid for redemption, (3 M. L. T. 395) ...	448
—Redemption by son of the mortgagor before expiry of term fixed in mortgage—Clog—Long term is not clog on redemption, P. L. R. 190/, No. 119 ...	84
—Redemption—When the right to redeem accrues, 18 M. L. J. 235 ...	331

———Right of redemption—Who can claim, 4 N. L. R. 9	... 228
———Right of mortgage to, 52 Sol. J. 171	... III 20
———Redemption—meaning of "Ta miyad das sal tak giraw rahu le kabza rahita lai 'Bight of mortgagor to redeem—meaning of the term "foreclosure" in the Punjab, 3 P. W. R. 482...	... 584
———Redemption right of—Mortgage—purchase by prior and puisne mortgagees—accounting tenants settled on the land by prior mortgagees—Right of, 8 C. L. J. 173	... 494
———Usufructuary mortgage—Ouster of mortgagee adverse pos- session, 30 All. 150...	... 294
———Usufructuary—by occupancy tenant—surrender devolution of equity of redemption, 4 N. L. R. 57	... 294
———Sub-mortgage—Right of sub-mortgagee to bring the mort- gaged property to sale—Parties, A. W. N. 1908, 191=5 A. L. T. 402	... 390, 448
———Redemption partial, 6 C. L. J. 672	... 37
———Redemption—Foreclosure suit against father—Sons not made parties—Creditor having knowledge of their existence—Sen's suit to redeem maintainability of, 5, All. L. J. 267	... 276
———Equity of redemption—Purchase by a mortgagee from one of the mortgagors—effect of, 12 C. W. N. 746	... 390
———Prior Right of to redeem a Puisne Mortgagee—Foreclosure in favour of prior mortgagee, effect of, when puisne mortgagee no party—Mortgagee puisne right of to redeem a prior mortgage when property already foreclosed by the prior mortgage, 10 O. G. 356	... 176
———Prior mortgage of whole property—Shares subsequently mortgaged served to persons—Rights of mortgages, how to be ad- justed—Right to redeem—Successive redemption—Suits by different mortgagees—Res judicata—Civil Procedure Code, s. 13, Expl. II, 12 C. W. N. 515	... 390
———Puisne mortgage obtaining a decree for sale after redeeming a prior usufructuary mortgage—Effect of—Whether objection could be raised in execution, 4 A. L. J. 764...	... 38
———Purchaser of equity of redemption not made party in mort- gage suit—His right against purchaser and mortgage sale—Respec- tive rights—How adjusted—Suit for possession—Limitation—Trans- fer of Property Act, ss. 60, 85—Res-judicata, 11 C. W. N. 107...	... 38
———Subrogation—Payment of mortgage amount by vendee whose title has been subsequently found invalid, 18 Mad. L. J. 306	... 492
———Mortgage-suit—Appeal—Jurisdiction, Sadashiv v. Nana, (Appeal from order 12 of 1908)	... (IV) 12

- Suit by puisne mortgagee for sale—Subject to the prior mortgage, 18 M. L. J. 298 ... 493
- Suit for redemption—Old mortgage—Burden of proof, Secondary evidence of terms of a mortgage deed—Admission, 11 O. C. 285 ... 540
- T. P. Act, sec. 91—Redemption—Who may redeem—Perpetual lessee, 29 All. 679 ... 85
- Transfer of Property Act, s. 82—Requisites of mortgagees seeking possession—Redemption, 10 Bom. L. R. 203 ... 178
- Usufructuary mortgage—Ouster of mortgagees, A.W. N. 1908, 25 ... 174
- Motion for contempt—Execution of a decree—Civil Procedure Code, s. 244, 9 Bom. L. R. 1861 ... 87
- Municipality—Encroachment upon Municipal land—Act XX of 1891, sec. 95—Evidence—Blyths map of Amritsar Municipality, 3 P. W. R. 88 ... CXIX
- Election of councillor—Validity of—Applicant's right to question election—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election—Petitions—Jurisdiction of High Court—Civil Procedure Code, sec. 11—City of Bombay Municipal Act (Bombay Act III of 1888), sec. 33, 31 Bom. 604 ... 120
- Surat City Municipality—Rules framed in the year 1905—Rules 1, (2), 4 (a), (3), (5), (7)—Water supply by the Municipality Notice to cut off the water supply—Waste—Domestic purposes—Legitimate household purposes—Use of water by bonafide occupiers of a house, 32 Bom. 460 ... 541
- Water connection—Rules of—Framed by the Municipality—Construction of the rules, 10 Bom. L. R. 622 ... 448
- Mutt—Head of—Powers to bind mutt property—Income of mutt in the hands of successor liable for debts properly contracted, 31 Mad. 117 ... 294
- Mutwalli—Whether infant can be appointed—Waiver—Civil Procedure Code, sec. 44 (a)—Leave under, 8 C. L. J. 196 ... 49
- N. W. and Oudh Land Revenue Act, s. 233—Revenue Court Partition effected by right to challenge by a person having no opportunity to raise objections—Civil Court—Jurisdiction of—To consider those objections, 10 O. C. 363 ... 1
- N. W. P. Land Revenue Act, (XIX of 1873) ss. 294 (g) and 233—Act (Local) No. III of 1899 (Court of Wards Act), ss. 9, 35 and 47 Power of Court of Wards to sale property under its superintendence, 28 All. 589 ...

- N. W. P. Municipalities Act, (1 of 1900), ss. 168, 121*—Order to vacate land—Conviction on—Failure to comply with—Daily fine—Legality of, 11 O. C. 121 ... LXXXI
- N. W. P. Rent Act, s. 174*—Lease by Collector—Proceedings commenced before the passing of Act II of 1901—Termination of, 5 A. L. J. 472... 449
- Nome—Non de plame*—Right to use, *Landa v. Greenbarg*, 52 S. J. 354, 124 L. J. 477 ... 8
- Negligence*—(1908) W. N. 136; 125 L. T. 104 ... (III) 16
- Use of another's pony—Death of pony—Trespass, 14 Bur. L. R. 218 ... 495
- Evidence of similar occurrences, 125 L. T. 284, ... (III) 20
- Negotiable Instrument*—Putting and end to, 12 C. W. N. 1108 ... 542
- Act XXVI of 1881, Sections 4 and 13—Negotiable instrument—Promissory note made payable to a specified person is not negotiable—Transfer of such promissory note by endorsement, P. L. R. 1907, No. 106 ... 86
- Sa. 7, 32, 53, 64, 115, 134—Bills of exchange drawn on defendant and endorsed over to plaintiff by the banks in whose favour they were drawn—Failure of defendant to pay—Suits to recover on the bills—Plaintiff's capacity—Holder deriving title from holder in due course—Bills accepted need not be dishonoured and protested—acceptor—liable at maturity—assent not signed on the bills but on copies—assent not valid, 32 Bom. 247 ... 391
- Sa. 8, 78—Right of indorser endorsing for collection—Indorser on—regaining possession of bill, may strike out name of indorser and himself sue on the bill, 30 Mad. 441... 40
- Section 13—Hundi—not payable to order or bearer—negotiability—Suit by Transferee—Cause of action against drawer—Suit under Chapter XXXIX Civil Procedure Code, 1 Sind L. R. 57 ... 176
- Secs. 30, 39, 86—Hundi payable at sight—Unconditional acceptance—Holder—agreeing to arrangement for payment with acceptor—Notice of dishonour—omission to give—Drawer discharged, 8 C. L. J. 103... 450
- Secs. 30, 39, 36—Hundi payable at sight where holder agrees to an arrangement with acceptor for payment—notice of dishonour—omission to give—Discharge of drawer, 12 C. W. N. 644... 592
- S. 50—Holder in due course, 14 Bur. L. R. 25... 280

Sec. 80—Interdict collateral agreement natukatti—Chatties—Bill of Exchange—construction, 4, M. L. T. 309 ...	584
Notice—Equitable right—Well established principles, (S. A. 309) of 1907) ...	12
Equitable right—Well established principles, Venu v. Lunga (S. A. 309 of 1907)... ..	IV 12
Transferee for consideration without notice—charge for maintenance of Hindu widow declared by decree—Constructive notice Vendor and purchaser, 1 Sind, L. R. 134... ..	241
Transfer of Property Act Sec. 108 (J) 12 O, W. N. 724	393
Knowledge of purchaser of such circumstances—Proviso in mortgage to protect purchaser—Transfer of Property Act Sec. 69, 31 Bom. 566	137
Notice to quit—Denial of title, 2 M. L. T. 368... ..	25
Notice to accused—Complaint under S. 182, I. B. Code, 4 Nag. L. R. 136	CXXIV
Obstruction—Obstruction of highway, 124, L. T. 269=52, S. J. 208; 43 L. J. 41=1908, W. N. 20	III 11
Public—Killing of cows by Muhammadans—Custom, A. W. N. 1908, 64=5, A. L. J. 147... ..	177
Oath—Agreement to be bound by—When avoidable, 17 M. L. J. 536	41
Oaths Act Ss. 2, 6 and 13—Competency to testify but inability to understand oath—Oath or affirmation evidence recorded without administering—Admissibility of evidence so recorded against the accused, 10 O. C. 337	155
Sa. 8, 9, 12—Agreement between parties that on plaintiffs failure to take the oath suit should be dismissed—Plaintiff's failure to take the oath—Practice, 3 M. L. T. 1908	129
Sa. 11, 12—Where plaintiff agreeing to take oath subsequently refuses, Court cannot dismiss suit but must record the fact of refusal under S. 12 and proceed with the suit, 31 Mad. 1 ...	231
Occupancy holding—Transferability local usage of Evidence to prove—Transferee allowed to hold and pay rent as marfadar—Mutation of name on payment of salami, 12 C. W. N. 539 ...	393
Transferability—Usage—Growing usage not sufficient—Usufructuary mortgage by tenant—Subsequent relinquish men to landlord—Right to landlord to re-enter mortgage or out and out sale, 12 C. W. N. 878... ..	449
Non-transferable bequest of, it, or voidable—Void and voidable transaction—nature of—Recognition by landlord of transfer, 8 C. L. J. 261=12 C. W. N. 1086	542

Index.

Non-transferable, transfer of abandonment—Permission possession of homestead land—Khes possession suit for, 7 C. L. J. 303	231
<i>Opium Act (1 of 1878) Ss. 5 and 9</i> —Rules framed under the act—License in form prescribed by the Commissioner—Breach of, 1 Sind L. R. 70	XOII
<i>Sec. 9 Rule 16, Sec. 14</i> —Opium Possession of search—Illegality, T. L. R. 1907. No. 118	XIX
<i>Oude Civil Courts Act, S. 17</i> —Possession of land by demolition of house thereon or on payment of—Compensation for it—Valuation of suit for purposes of jurisdiction, 11 O. C. 457	296
<i>Oude Estates Act</i> —Birt zamindari rights—Rights of persons holding under proprietary rights in villages under taluqdars before annexation of Oudh—Policy of Government under Record of Rights Circular No. 2 of Heritable and Transferable rights, 29. All. 708	129
<i>Oude Land Act, S. 107</i> —Declaration of under proprietary rights and assessment of rent—effect of, from date of order, 11. O. C. 187.	402
<i>Oudh Land Revenue Act, (III of 1901) S. III Cl. (b)</i> —Suit to establish right to share claimed in a partition case in a revenue Court, after expiry of period fixed by revenue Court to establish such right, 11. O. C. 114	338
<i>Oude Municipal Act, Ss. 132 and 147 and Rule (2) of Ss. 128 and 132</i> —Conviction for failure to Remove Certain Building—sentence of daily fine on second conviction for failure to remove the structure—Prospective fine, 11. O. C. 122	LXXXI
<i>Pardanashin Women</i> —Relief—fraud—practice, 1 Sind. L. R. 160	236
<i>Parsi</i> —Mukted trusts are valid trusts—Zoroastrian faith tenets of—Scheme of the belief of the Zoroastrian faith explained—Practice—Decision by single judges how for binding on their successors, 10 Bom. L. R. 417	394
<i>Pari Mariage and Divorce Act, (IV of 1865) Sec. 32</i> —Divorce adultery of petitioner, 10 Bom. L. R. 1019	584
<i>Partie's</i> —Suit for rent—Effect of all mutwallis not being made partie's to a rent-suit, 35 Calc. 183	296
<i>Partition Act, (IV of 1893) Sec. 2</i> —Decree for partition—Partition of a house in two divisions—The mode of division found inexpedient in execution of the decree—Power of court to order sale of the house and to divide the sale proceeds, 32 Bom. 103=10 Bur. L. R. 23	180-231
<i>Section 4</i> —Transfer of Property Act, Section 44—“Undivided family.” Section 4 of the partition Act applicable to mahomadanans, 20 All. 324	542

————— <i>S. 4</i> —Succession to tenancies created under the Act, 9 P.	
L. R. No. 24	189
Partition —Suit for partial partition of common land— <i>Shamlat</i> not maintainable—Co-sharer by purchaser, 3 P. W. R. 263 ...	338
—————Suit for—Right of a putnidar of a small share of an estate to claim partition, 34 Calc. 1026	41
—————Discretion of the Court, 3 M. L. T. 249	278
—————Mortgage of undivided share—Allotment of property on partition—Charge for owelty money—Priority, 12 C. W. N. 373 ...	177
—————Partial—Cosharers not members of joint family—Suit if maintainable, 12 C. W. R. 640	395
—————Suit—Preliminary decree—Partition of part by mistake or consent of co-owners effect of—Possession joint—suit for—Possession by one co-owner,—when adverse—Onus of proof—Nature of possession when adverse title set up by one co-owner—User acts of constructive possession doctrine of, 6 C. L. J. 735 ...	130
Partnership —Dissolution of partnership—Procedure to be adopted in accounting—Distribution of assets—Right and liabilities of partners in the absence of any contract to the contrary, 3 P. W. R. 315... ..	396
Partners —Pro note executed by some in favour of another partner—Maintainability of the suit by the latter, 4 Mad. L. T. 195 = 18 Mad. L. J. 347	542
————— <i>Right of suit</i> —One partner taking a promissory—note from other members in respect of sums advanced to the partnership can sue on the promissory note, 31 Mad. 343	584
Partnership —Suit for dissolution of—necessary parties, T. C. L. J. 266... ..	177
—————Execution of one member by others if causes dissolution Contract act see (252 (7)) suit for account or dissolution by excluded—partner—Limitation Act Arts. 106, 120, 12 C. W. N. 455	232
—————When retired partner is liable—Rights to person dealing with a firm—Joint—Hindu—family—Effect of partition of long standing—Indian Contract Act Ss. 239, 245 and 246, 3 P. W. R. 345	450
—————Fraud by co-partner— <i>Hatehetta</i> —material alternation by a partner to set up exclusive title to debt suit on behalf on firm—Maintainability claim if to be disallowed to the extent of the interest of fraudulent partner—apportionment before dissolution, 12 C. W. N. 716	395

———Sleeping partner, who is rights of, 10 Bom. L. R. 811 ...	543
———Dissolution of—Civil Procedure Code Sections 17, 215 and 215 A. Amendment of plaint Jurisdiction, 3 P. W. R. 339...	450
———Partner—Power of single to mortgage—Partnership property—Contract Act, s. 251—A single partner by objecting cannot vary articles of partnership—Transfer of Property Act, s. 53—Transfer cannot be impeached by any but the creditors, 31 Mad. 206=4 M. L. J. 495 ...	...
<i>Party wall</i> —Raised at plaintiff's expense used by—Defendant in junction—Removal encroachment, 1 Sind L. R. 66 ...	178
———Owners of—Duties of as to repairs, 124 L. T. 359; 43 L. J. 91; 24 T. R. 309... ...	...(III) 11
<i>Putni</i> —Arrear of putni—Rent due to a co-sharer—Zamindar—Suit by him under Act VII of 1885 to recover the whole rent of the tenure—Refusal of his co-sharer—Zamindars to join him as plaintiffs to bring the same—Law applicable to the case—Agreement to pay shares in the putni rent separately—Its effect on the right to sue and on the tenure, 10 Bom. L. R. 66=3 Mad. L. T. 151 ...	142
<i>Patwari's rates and cesses</i> —Plaintiff's suing as assignees of—Government revenue whether they can recover, 4 A. L. J. 816 ...	86
———Assignee of Government revenue in an imperfect pattidari village—Right to recover rates and cesses paid on account of a patti owned by another co-sharer, A. W. N. 1908, No... ...	178
<i>Pauper</i> —Test—Property in possession, 1908 W. N. 26; 43 L. J. 55 52 S. J. 223, 24 T. J. 334 ...	...(III) 11
Penal Code, ss. 21, 186 —Public servant, 10 Bom. L. R. 761 ...	XCVIII
——— <i>Ss. 21 (cl. 10), 143, cl (5) 186</i> —Unlawful assembly—Use of criminal force—Public servant—District Board, 12 O. W. N. 96 ...	XIX
——— <i>Ss. 23, 231</i> —Counterfeiting coin—Definition—Intention, A. W. N. 1907, 289=4 A. L. J. 733=30 All. 93... ...	LXVIII, XII
——— <i>Sec. 34</i> —Common—intention, 7 Cr. L. J. 205 (U. B. R. Cr 1907)... ...	LXIX
——— <i>S. 62</i> —Cases when forfeiture of property advisable, 3 P. W. R. 26 ...	LXIX
——— <i>Ss. 75, 114</i> —Previous conviction abetment subsequent offence—Enhancement of sentence, 10 Bom. L. R. 26 ...	XXXI
——— <i>S. 75</i> —Previously convicted, 14 Bur L R. 186 ...	XOVIII
——— <i>Sec. 75</i> —Ten year's interval between previous and subsequent conviction for petty offences, convict of advanced age, 3 P. W. R. 243 ...	LXIX

- *Ss. 78, 79, 344*—Custody of Civil prisoner commitment of Civil prisoner to jail wrongful confinement—oral order of Judge—Mistake of law—mistake of fact—Civil Procedure Code, *Ss. 478, 481, 4 L. B. R. 283=8 Cr. L. J. R. 68* CVI
- *Ss. 96, 106*—Private defence, right of—Common—Object as found by Trying and appellate Courts, 35 Calc. 384 LXXXI
- *Secs. 96 to 106*—Private defence—Right—Assembly of armed men prepared for fight—Misdirection to jury, 35 Calc. 368, ... LXXI
- *Ss. 96 to 106, 147, 325, 149*—Private defence—Right of—Rioting—Attack by a large body of armed man prepared to fight, 35 Calc. 443 LXXXII
- *Ss. 99, 100, 147 and 148*—Rioting—Right of private defence where the parties of the complainant—Accused engaged in a free fight and when the accused know that they would be resisted in their acts—Jury misdirection in the charge to, 12 C. W. N. 384 XI
- *Ss. 99, 147*—Entry on land in possession of another—Temporary occupation—Unlawful assembly—Private defence,—right of *ss. 99, 101, 104, 147, 35 Cal. 103* LXIX
- *Ss. 99, 147*—Right of private defence—Time to have recourse to the public authorities—Person in possession of property—Rioting, 7 C. L. J. 359=12 C. W. N. 379... .. LXX
- *Ss. 124A and 139*—Intention—Attempt—Confiscation of press not allowed—Presumption of Hindu family being joint, 2 P. W. R. 1907 XXXI
- Sedition—Incitement to insurrection—Reasonable criticism of Government—Admissibility of seditious articles not forming the subject of the charge—Liability of printer for seditious matter in a Newspaper Act XXV of 1867, s. 7, 35 Calc. 945 OXXII
- *Ss. 124A, 153A*—Sedition—Intention—Attempt—Criminal Procedure Code, *secs. 233, 234, 235*—Joinder of charges—Special Jury—Application for, 10 Bom. L. R. 848 CXIX
- *S. 124*—Sedition—"Swaraj"—Incitement to secure "Swaraj"—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code. *S. 108, 13 Calc. 991=6. C. L. J. 199* XI
- *S. 124A*—Sedition—Republication—Privilege, 7 C. L. J. 49 ... XIX
- *S. 147*—Several alternative common objects charged Judgment of appellate Court—Omission to find whether the charge was sustainable and which common object has been proved, 35 Calc. 718=12 C. W. N. 944 XCIX

- S. 153 A.*—Meaning of, 10 Bom. L. R. 848 ... CXX
- Sec. 175*—Omission to produce document by an accused on trial—Criminal Procedure Code. Sec. 94, 12 C. W. R. 1014=8 C. L. J. 320 ... CVI, CXX
- Sec. 178*—Refusal to give evidence on the ground of non-payment of expenses, 7 Cr. L. J. P. 208 (U. B. R. Cr.) 1907 ... LXX
- Secs. 182, 211*—Criminal Procedure Code. Section 195—Information given to the police alleged to be false—Procedure—Notice, 30 All. 52 ... IV
- Sec. 188*—Order—Promulgation of—Disobedience to the order—Picketing—prohibition of—Public Peace, 10 Bom. L. R. 1047 ... CXXXI
- Sec. 192, 193*—Statement made to police—Admissibility in evidence—Section to prosecute for perjury—Criminal Procedure Code, S. 476 Revision, 4 A. L. J. 811 ... XX
- Sec. 193*—Prosecutions in alternative in respect of statements made under s. 164 of the Criminal Procedure Code and subsequently as a witness in Court Criminal Procedure S. 164, A. W. N. 1908. 73 ... L X
- S. 193*—False statement made in a deposition which was not read over the witness in presence of the accused or his pleader—Criminal Procedure Code, sec. 360—Non compliance with—Effect of—Indian Evidence Act, secs. 91 and 80—Proof of statement, 12 C. W. N. 845 ... XCIX
- S. 211*—False charge—Practice—Opportunity to be given to prove charge before prosecuting, 29 All. 587... XI
- S. 216*—object of, 14 Bur. L. R. 97 ... LXXI
- Ss. 225, 253 and 379*—Rescue from lawful custody assault to deter public servant from duty—Arrest by duffadar for theft not committed in his presence—Theft whether a continuing offence—Village Chaukidari Act (Beng. VI of 1870) S. 39 cl. (2), 35 Cal. 361 ... LXXXII
- S. 225 B*—Offence under section committed when a prisoner escapes while the peon having custody of him is asleep, 31 Mad. 271 CVII
- Ss. 228, 500*—Criminal Procedure Code, S. 976—Principle when Munsiff wants to show cause, 6 C. L. J. 713 ... XI
- S. 258*—Possessing implements for counterfeiting—Queen's coin—Evidence, 3 M. L. J. 140 ... XLI
- S. 273*—Food—Sale of food unfit for use by human beings—Sale for animals, 9 P. L. R. 423 ... LXXXII
- S. 287*—Negligence—Machinery—Working of, P. L. R. 112 XX
- Ss. 299, 304*—Deadly blow presumption, 14 Bur. L. R. 264 OXX

- S. 302—Murder—Intention to cause death—Striking heavy blow, 13 Bur. L. R. 330 XII
- S. 302—Murder—Evidence opposed to probabilities, 1 Or. L. Re. 392 XX
- Ss. 302, 304, 325, 328 and 329—Administration of dhatra for the purpose of facilitating robbery—Death of person to whom dhatra is so administered—Offence not murder, but only causing grievous hurt, A. W. N. 1908, 223 CXXXII
- Ss. 304, 393—Hurt—Culpable homicide—Benefit of a doubt—Police pressure, 9 P. L. R. 47=3 P. W. R. XII
- S. 326—Grievous hurt—Essence of offence—Jury—Verdict of “guilty but not voluntarily”—Meaning of, S 338—Conviction under—Causing grievous hurt by rash and negligent act—Criminal Procedure Code, Ss. 237, 238, 12 C. W. N. 530 LXXI
- S. 338—Operation for cataract—Failure of operation—Negligence, 3 A. L. J. 155 XIII
- S. 341—Wrongful restraint, 5 Mad. L. T. 141 CVII
- S. 342—Policeman charged—Good faith. 14 Bur. L. R. 202... CXXI
- S. 359—Essentials of, 14 Bur. L. R. 202 CXXI
- S. 363—Parent—Legal keeping of—Intention to make unlawful use of the minor—Misdirection, 1 Sind L. R. 104 ...CXXII
- Ss. 361, 363—A female minor leaving parents as pre arranged of her own accord—Accused meeting and eloping, Cr. L. J. R. 210 (1907, U. B. R. Cr.) LXXI
- S. 372—Essentials of the offence—Letting out minor for single act of intercourse, 13 Bur. L. R. 389 XLII
- S. 379—Stealing fish in a tank at night—Owners of the right of fishery watching with a gun—Firing on the intruders and hurting them, 2 Cr. L. Repl. 238 CXXXII
- S. 379—Theft of cash—Stolen money—Found secreted and separated from other cash—Its evidently value, 2 M. L. T. 498=1 Cr. L. Rep. 394 XIII, XX
- Ss. 379, 431—Theft—Mischief—Running water—Cutting embankment of channel and diverting running water 35 Cal. 437=12 C. W. N. 534 LXXII, LXXXIII
- Ss. 379, 143—Conviction under—Recognizance to keep peace where justifiable, 7 C. L. J. 172 LV
- Ss. 379, 408—Theft—Criminal misappropriation—Finding property in crowded place and retaining it for a short time—No proof of dishonest intention—Previous conviction, 5 P. W. R. 72 ... CVII
- Ss. 380, 457—Accused deaf, and dumb from birth—Admis-

- sion of guilt by signs—Not enough for conviction, 2 Cr. L. Repl.
 440 CXXXII
 —S. 392—Murder—Evidence opposed to probabilities, 2 M.
 L. T. 476... .. XII
 —Ss. 403, 409—Convictor for the minor offence—Claim to be
 tried for minor offence—Conviction not invalid, 2 M. L. T. 495=
 1 Cr. L. Rep. 391 XIII, XXI
 —S. 406—What is, N. B. Cr. Rg.=8 Cr. L. J. 24 XCII
 —S. 406—Breach of trust—Case of Civil nature—Magistrate
 —Duty of, 2 Cr. L. Repl. 61 VI
 —S. 409—Subject matter of the breach of trust, not belonging
 to Government—Criminal Procedure Code, 222 (2)—Inclusion of
 various items in one charge, 1 Sind L. R. 38 XLII
 —S. 411—Thief himself cannot be convicted under S. 411,
 4 Nag. L. R. 71 LXXXIII
 —S. 411—Stolen property—Joint occupancy of room—Pre-
 sumption from nature of the property, 1 Sind L. R. Cr. 66 ... VI
 —S. 411—Jewels stolen in dacoity accused in possession—
 Identification by owner—Presumption—Onus—Indian Evidence Act,
 S. 114, 3 M. L. T. 30 XXI
 —S. 411—Possession of stolen property—Joint Hindu family
 —Liability of head of the family or managing member 29 All. 598. XII
 —S. 414—Pointing out stolen property—Inadmissibility of
 admission of having concealed it, 3 P. W. R. 52 XCIX
 —S. 415—What is—Essentials of cheating, 13 Bur. L. J. 258. XII
 —Ss. 417 and 511—Attempt to cheat—Complainant in a
 prosecution for attempt to cheat, 12 C.W.N. 750=7 C.L.J. 375 LXXII, XCII
 —Ss. 419 and 511—Representation by false certificate to get
 reinstated into office—No damage or harm to the Officer, 4 M. L.
 T. 324 CXXXII
 —S. 423—Fraudulent execution of deed to stave off—Pre-emp-
 tion suits, 9 Pun. L. R. 138... .. XLIII
 —S. 426—Mischief—Removal of earth from—Odoi—No right
 to remove, 3 M. L. T. 117 XLIII
 —S. 430—Act No. XII of (1870) S. 70—Mischief—Definition,
 A. W. N. 1908, 55=5 A. L. J. 159 XLIII
 —S. 441—Criminal trespass—Joint owner—Possession, 10
 Bom. L. R. 285 VI
 —S. 441—Trespass—Unlawful assembly—Owner of land tak-
 ing away crops placed by a thief, 3 Nag. L. R. 177 XXXII

- *Ss. 443, 447, 457*—House breaking by night—Attempt—
Going to the proof of a house with a stick and an instrument used
for house breaking, 9 P. L. R. 141 XLIII
- *S. 447*—Claim of right, 7 Cal. L. J. 238 XLIII
- *Ss. 463 and 471*—Forgery and using a forged document—
Dishonest or fraudulent intention necessity of proving—False re-
ceipt—Preparation or use of an offence, 12 C. W. N. 113 ... CXXII
- *S. 471*—Forgery—Dishonestly using as genuine a forged
document—User—Filing document but not tendering it in evi-
dence, 35 Cal. 820... .. CXXII
- *S. 471*—Dishonestly or fraudulently using as genuine a forg-
ed document—Dishonest or fraudulent intention—Receipt for docu-
ments actually bound—Forgery, 8 C. L. J. 317 ... CXXIII
- *S. 477 A*—Falsification of Accounts—Intention to defraud—
False entries made to conceal previous embezzlement, 35 Cal. 450 LXXXIII
- *Ss. 480, 482*—Selling ones oil in tins of another Company
—Tins materially altered but name of the Company—Embossed on
tin, 13 Burma L. R. 381 XLIII
- *S. 494*—Bigamy—Marriage of a Christian with a Hindu
woman according to Hindu rites while Christian wife was living,
1 Cr. L. Rep. 388=2 M. L. T. 845=30 Mad. 550 ... XXI, XXXII
- *S. 499*—Evidence Act, *Ss. 105 and 132*—Defamation—Wit-
ness—How far witness protected when giving evidence, 29 All. 685 XXI
- Persons act S. 4*.—Grant for charitable purposes—Government order
imposing full assessment, 3 M. L. T. 105 131
- *S. 4*—Act does not apply to endowments for pious or religious
purposes, 31 Mad. 12 232
- Perpetual lease*—No suit for pre-emption in case of Lease not a sale
—Oudh laws, Act S. 9. 10. O. C. 348 181
- Plaint*—Presentation of suit by surviving partners—Non-joinder of
one of the partners—Effect of, 1. Sind L. R. 191 234
- Order returning—Plaint for presentation to proper court—
Submission to the order—Right of appeal, effect on, 11 O. C. 98 ... 302
- Plaintiff's title at the time of institution of the suit—Title
acquired by purchaser to, the cause of action, 11 O. C. 290 ... 544
- Pleader*—Improper conduct of—Validity of—Warrant—Issue of, by
the subordinate Magistrate against pleader accusing the Magist-
rate as acting "Maliciously vexatiously and with a vindictive
spirit."—Whether amounts to improper conduct of pleader, 3 M.
L. T. 237... ..

<i>Pled and client</i> —Agency—Relation between co-mortgagors one of whom a pleader, if fiduciary—Accountability—Settled accounts—Suit to falsify—Specific averment of errors necessary—Changing suit for accounts into Suit to falsify settled accounts—Procedure in account suits, 12 C. W. N. 28	...	...	...	...	86
<i>Pleadings</i> —17. K. L. R. 278	...	...	...	...	165
<i>Pleadings</i> —Title based on estoppel (S. A. 244 of 1907), Badulal v. New Mofussil Co. Ltd.	...	...	...	...	IV 4
<i>Pledge</i> —Sale for debt—Subsequent redemption—Revival of debt, 3 M. L. T. 293	...	...	...	...	...
<i>Police Act (5 of 1861) Ss. 17, 19</i> —Special constables appointment—Circumstances justifying—Disobedience of order under S 17—offence under S. 19, 15 C. W. N. 366	...	...	...	...	XLIV
—Ss. 17, 19—Special constables—Grounds of appointment—35 Cal. 454=12 C. W. N. 727	...	...	...	...	LXXXIII
<i>Ports Act (IX of 1899) S. 6</i> —Rule 5 of the Karachi Port's rules—Summarily ordering a vessel to leave the port—Legality of such rule, 1 Sind L. R. 202	...	...	...	...	233
<i>Possession</i> —Of one plot—Effect of, 17 K. L. R. 374	...	...	...	...	32
—Of Weapon, requiring repairs—Revolver out of repair—Acquittal appeal by Local Government, Ss. 4, 13 and 19, 3 P. W. R. 28	...	...	...	...	LVII
—Oral agreement with the owner—Finding of possession of part of a village, 3 M. L. T. 331	...	...	...	...	389
—Proof, 7 C. L. J. 414	...	...	...	...	396
—Suit for onus of proof—Nature of evidence to be adduced by either party—Title proof of, effect of, pre-emption of—Possession—Constructive possession—Survey map—Value of, as evidence 12 C. W. N. 293	...	...	...	...	131
—Proof of title—Presumption in favour of the man in possession, 10 Bom. L. R. 571	...	...	...	...	451
<i>Practice</i> —Admission in the judgment—When a party can question, 7 C. L. J. 414	...	...	...	...	396
—Pleading, relief not claimed in plaint—Plaintiffs failure to prove all facts alleged whether he can get relief on facts admitted, 4 Nag. L. R. 86	...	...	...	...	396
—Pleadings—New case in appeal, 10 Bom. L. R. 514	...	...	...	...	397
—Pleadings—Issue inconsistent, 14 Bur. L. R. 65	...	...	...	...	398
—Setting up inconsistent pleas—Defence of want of genuineness of a deed—Issue upon that basis—Plea of misrepresentation	...	...	...	...	...

undue influence or fraud, not allowed subsequently, 10 Bom. L. R. 494...	397
—Amendment—Costs, Chagan v. Mulchand, (S A.114 of 1906)IV 12	
—Cross objections—Not pressed—Costs, 4 M. L. T. 303 ...	585
—Refusal of Court of first instance to examine all the plaintiff's witnesses—Appeal by defendant decreed—Remand, 30 All. 367...	585
—Statement not contradicted in written statement, 2 P. W. R. 275 ...	42
—Suit on Tort—Damages for fraud—Assessment of fraud—Assessment of damages in plaint—Larger amount found due—More due, 17 M. L. J. 625 ...	153
—Exclusion of question by a lower Court—Form of question to be stated—Interference of superior Court, 9 Bom. L R. 1385 ...	87
—Criminal Procedure Code, S. 439—Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive, 32 Bom. 162 ...	VI
—Appellate Court—Taking notice of events happening after the order—Appealed against, 6 C. L. J. 662 ...	41
—Charter Act, S. 15—Letters Patent, Ss. 28 and 29—Powers of High Court to stay proceedings in Criminal Courts—Some matter in appeal, 1 Sind L. R. 103 ...	OXXIII
—Judgment based on an erroneous assumption—Court's power to re-open it—Government grant of revenue of a village—Grantee can bring under cultivation uncultivated or unassessed land and profit by it, 10 Bom. L. R. 531 ...	339
—Enhancement of sentence—Conviction treated as conclusive, 10 Bom. L. R. 93 ...	XXXII
—Retrial on the ground of misjoinder, 4 Nag. L. R. 71	LXXXIV
—Duty of Court to relieve injustice caused by its own facts, 12 C. W. N. 326 ...	178
—Suit for possession—Failure of cause of action—Proper decree to the made—Collateral issues, Court's power to decide and pass declaratory decree, 12 C. W. N. 227 ...	131
—Death of a party—Abatement, 7 C. L. J. 266...	179
—Pleader having no instruction—Duty of Court, 3 M. L. T. 225 ...	233
—Sanction—Grant of—Conflicting statements, 17 K. L. R. 206 ...	XLIV
—Magistrate—Explanation—Supplement to judgment, 7 Cal. L. J. 234...	XLIV

—Evidence—Documents—Privilege—Attaching [to documents— Such documents to be properly described for identification—Docu- ments passing between a company and its officials after threat- ened suit not per se privileged, 10 Bom. L. R. 796 ...	496
—Refusal to accept summons sent by registered post—Not sufficient service, 18 K. L. R. 1 ...	373
—Declaratory decree, 35 Calc. 777 ...	543
—Court—Decree—No specific direction as to accounts— Decree contemplating accounts—Direction can be given at a subse- quent stage, 9 Bom. L. R. 1380 ...	87
—Not proper to examine defendant first as a witness, 3 P. W. R. 393 ...	452
—Criminal trial—Waiver of provisions regulating the trial— Illegality—Accused cannot waive, 18 M. L. J. 330 ...	CVIII
—Private Vakils—Appearance of—Discretion of Court. 4 M. L. T. 91 ...	CVII
—Plaintiff's claim against one defendant dismissed—Plaintiff not appealing—Appeal by other defendant—Power of Court to pass decree against successful defendant, 3 P. W. R. 216 ...	245
—Proceedings on Sunday—Whether void—Lord's day Act— Application to India, 5 All. L.J. 107 ...	179
—Madras High Court—Original sides rules, 1902, Rule 533 —Advocates—Right to appear and plead, 3 M. L. T. 322 ...	296
—Joint Hindu family—Co-parceners to be joined as parties, Punamchand v. Chunilal (S. A. 625 of 1906) ...	IV 3
—Collector desiring to intervene Procedure Purshotam v. Balwant (C. Ref. 2 of 1907) ...	IV 2
—Secondary evidence—Objection raised after admission— Estoppel, 3 M. L. T. 297. ...	272
—Jurisdiction—Defect of—Found in appeal—Return of plaint. Shriram v. Secretary of State (F. A. 30 of 1906). ...	IV 1
—Additional evidence—Appeal Radha Krishna v. Malhar, (F. A. 36 of 1906) ...	IV 2
—Issuing commission to take evidence. Bicknell, 124 L. J. 592 ...	IV 8
—Order once made—Res Judicata, effect of—Subsequent rule of law—Remedy—Review. Vinayak v. Narayan (F. A. 90 of 1906). ...	IV 6
—Proof of previous connection—Finger prints—Finger impres- sion slip—Proof of previous conviction—Identification certificate of officer in charge of finger print—Bureau—Admissibility in evidence,	

4 L. B. R. VII Crim. L. J. 406	...	...	...LXXIV
Summons taken out—Not served—No adjournment granted—			
remand. Shivbasan Bibi v. Sabin Bibi (F. A. 125 of 1907).			... IV 10
Dismissal for default—Setting aside order—Conditions as			
to costs, 1 Sind L. R. 43	...	...	... 178
Amendment—Costs. (S. A. 114 of 1906)	...	...	... 12
Copies of Judgment, order or decree sought to the revised			
—Not necessary to be filed, 2 P. W. R. 463	...	...	... 87
Conviction based on deposition of accused—Illegal, 3 M.			
L. T. 150	...	...	...XXXII
Evidence Act S. 63—Copy—Letters of administration, 14			
Bur. L. R. 33	...	...	... 242
Relief granted, which was not asked for by the plaintiffs—			
Appeal—Court fee, A. W. No. 1908, 31	...	...	... 132
Refusal by counsel to urge a question—Effect of, 7 C. L.			
J. 152	...	...	... 132
Ground of appeal not argued—Whether ground can be taken			
on second appeal, 3 M. L. T. 293	...	...	... 398
Right to begin—Defendants supporting—Plaintiff must begin			
before defendants opposing him, 10 Bom. L. R. 327	...	...	... 297
Want of jurisdiction found in appeal—Procedure—Return			
of plaint, 7 C. L. J. 152	...	...	... 118
Pre-emption—Vicinage—Mohla — Jalotian Lahore City — Two			
houses adjoining one another sold together, one adjoining vendor's			
house—One edifice divided into two houses—Distinct properties—			
Pre-emptor not bound to take over whole bargain, 2 P. W. R. 469			... 88
Wajibularz—Custom or contract—Construction, 5A.L J.470			... 452
Customary right—Hindus of Bihar—Pleadings—Right of			
pre-emption—Assertion of proof—Delay in assertion—When to be			
made—Formalities—Who can perform—Manager of adult female			
under Court of Wards—Right and duties of Court of Wards Act			
(Bengal Act IX of 1879), Ss. 14, 39, 40, 48, 49, 50	...	...	...
Plea that a sale was in reality a gift—Estoppel—Belief in			
the representation, necessary for, 11 O. C. 176...	...	...	... 339
Price stated in sale-deed alleged to be fictitious—Burden			
of proof, 29 All. 618	...	...	... 42
When should the necessary claims be made—Effect of un-			
reasonable and unnecessary delay—Delay—A question of fact—			
Action to enforce a right of pre-emption—Mortgage—Redemption			
of same by the purchaser from the plaintiffs as mortgagees—Effect			
of such redemption on the plaintiff's right to pre-empt, 7 Cal.			

Index.

97

L.J. 318...	226
—Final decree—Dated fixed for preferring an appeal not expiring, 5 All L. J. 136 ...	180
—Transfer by vendee before suit for pre-emption is filed— Right of pre-emptor who has obtained decree against vendee alone to sue transferee—Limitation Act, art 10, 9 Pun, L. R.75...	179
—Vicinage—Mohalla Jatotian Lahore City—Two houses ad- joining one another sold together, one adjoining vendee's house and other pre-emptor's house—One edifice divided into two houses —Distinct properties—Pre-emptor not bound to take over whole bargain, 2 P. W. R. 464 ...	133
—Mortgage—Property purchased by vendees, subject to an unregistered mortgage—Pre-emptor bound to take the property, subject to the mortgage, A. W. N. 1908, 42 ...	132
—Execution of decree—Decree for pre-emption, A.W.N.1908,13	88
—Cause of action—Devolution by inheritance. 9 P.L.R.245 ...	235
—Wajib-ul-arz—Construction of document — "Shurkayan-i- shikmi", A. W. N. 1908, 16...	89
—Shafi Khaleet—Partner in the appendages—Nature of right —Common servient tenant between property of vendee and pro- perty in dispute, 5 A. L. J. 549 ...	491
—Burma—Right of co-heirs, 14 Bur. L. R. 205 ...	97
—Wajib-ul-arz—Construction of document—"Shurkayan i. shikmi."). 30 All. 77 ...	293
—Claim for pre-emption of revenue paying land competency of Court to entertain it with regard to its value at thirty times the Jama—Its incompetency to decree possession on payment of sum exceeding its pecuniary jurisdiction—Return of plaint, 2 P. W. R. 456 ...	119
—Sale of land—Pre-emption by a land owner—Vendee owing shadi land not a land owner—Pre-emptor getting help from his kid—Bona fide claim, 3 P. W. R. 283 ...	399
—Wajib-ul-arz—Co-sharer—Owner of resumed muafi land, 30 All. 329 ...	535
—Wajib-ul-arz—Construction of document—Custion or contract, A. W. N. 1903, 246 ...	586
—Withdrawal of purchase money by vendee does not affect right of appeal, 9 P. L. R. 325 ...	398
—Besar—Sale of interest of co-occupant, 4 Nag. L. R. 138...	544
—Wajib-ul-arz—Construction of document—Mamommadan law, 30 All 372 ...	585

- Vendee's re selling the property to one of the Vendors before pre-emption suit—Right of pre-emptor, when the resale is to a third party having superior right and when it is in favour of the Vendor himself, 3 P. W. R. 476 ... 586
- Vendee's re-selling property to vendor before pre-emption —Suit not affecting pre-emptor's right, 3 P. W. R. 479... 586
- Wajib-ul-arz—Construction of document, A. W. N., 1908, 257 = 5 A. L. J. 655 ... 586
- Pre-emption Act**—(II of 1905) Retrospective effect of, 9 P. L. R. 44 ... 184
- Presidency Banks Act (XI of 1876), sec. 50**—Bank of Bombay —Right of a shareholder to inspect register of shareholders of the Bank—Object of such inspection—Common law right of member of corporation to inspect books of the corporation—Companies Acts (X of 1866), sec. 231, IV of 1882), sec. 256. 32 Bom. 466 ... 586
- Primogeniture*—Restriction on alienation, 8 Cal. L. J. 274 ... 529
- Principal and Agent*—False representation by agent—Insurance—Recovery of premia, 124 L. T. 195, 1908, S. J. 158 ... III, 7
- Suit for money advanced to—Agent for benefit of principal —Authority of agent—Civil Procedure Code—Extent of Contract Act, s. 181—Powers of attorney, construction of—Interest on loan, 6 C. L. J. 639... 44
- Priority*—Partition—Owelty—Allotment on partition—Mortgage—charge for owelty, 35 Calc. 388 ... 340
- Privy Council*—Appeals to Letters Patent cls. 10, 39—High Court —Disciplinary jurisdiction—Suspension of Vakil—Leave to appeal—Privy Council, 32 Bom. 106... 236
- Appeal to—Pleader dealt with under disciplinary jurisdiction, G. S. Dandavate, In re C. A. 540 of 1907, ... IV, 1
- Leave to appeal to the Privy Council in Criminal case—Grave and substantial injustice to be shown—Criminal Procedure Code, secs. 283, 284, 235, 236, and 237, and 239—Joinder of charges, 10 Bom. L. R. 973... CXXXII
- Practice of—Courts in India differing as to question of fact—Questions as to a mortgage being a real or fictitious transaction—Circumstances to be taken into consideration in dealing with conflicting evidence, 30 All. 258... 545
- Probate**—Application for—Official trustee—Executor—Renunciation—Retraction—Probate and Administration Act, (V of 1881), S. 17, 35 Calc. 156 ... 298

—Revocation of—Practice—Succession Act, s. 234 13 Bur L. R. 325... ..	44
—Bequest of life-interest—Legatee not entitled to probate amendment of application for probate to include prayer for let- ters of administration not allowed, 9 P. L. R. No. 78... ..	181
—Revocation—Locus standi of co-executor to challenge ge- nuineness of Will, 12 C. W. N. 574... ..	400
<i>Probate and Administration Act, (V of 1881) sec. 41</i> —Application fee—Letters of administration—Bona fides—Discretion of Court to refuse, 12 C. W. N. 747... ..	400
—S. 50—Citation on minor, minor represented by applicant as guardian—Proceeding defective—Revocation—Application for applicant acting in concert with another, 12 C. W. N. 6... ..	45
<i>Proclamation</i> —Change of jurisdiction—Sambalpur—High Court to entertain appeal—Authority of the Governor General in Council to transfer a territory to the jurisdiction of the High Court, from that which was not under the jurisdiction of a High Court—Pro- clamation under statute 28 and 29, Vict. Chap. 15, 35 Cal. 701	483
<i>Promissory note</i> —Arrangements for cancellation, 12 C. W. N. 1103	544
—Assignment of fraudulent—Suit by alleged assignee—Oath by assignee as regards consideration for the note, if assignee en- titled to decree, 3 M. L. T. 163... ..	236
—Suit on—Onus of proving non-receipt of consideration—Inte- rest, 2 P. W. R. 275... ..	45
—Stamp avalorem, 124 L. T. 294; 1908 = W. N. 29 = 48 L. J. 46	III, 9
—Alteration—Onus, 14 Bur. L. R. 213... ..	498
—Suit on the unendorsed note by payee's brother—Chose in action—Assignment—Maintainability of suit—Transfer of Property Act, Ss. 130 and 137, 3 M. L. T. 7... ..	8
<i>Property</i> —Taken out of accused's possession, 2 Cr. L. Repl. 62... ..	VI
<i>Proof of</i> —Ejectment, suit for—Nij-jote land—Suit for possession of makarraridar—Occupancy raiyat—Plea of, 8 C. L. J. 170... ..	476
<i>Prosecution</i> —Abatement of—Defamation—Abatement of prosecution on the death of complainant, 3 P. W. R. 21... ..	LXXXIV
<i>Public</i> —Member of—Right of to be present at a Municipal meeting 43 L. J. 39. 124 L. J. 292 = 24 T. R. 254... ..	(III) 11
<i>Public Demands Recovery Act</i> —(Beng I of 1895) Ss. 10, 12, 31— Notice, service of—"Adult," meaning of—The Collector of 24 Pragnas—Certificate Officer, 35 Calc. 246... ..	298
<i>Public Nuisance</i> —Killing of cows by Muhammadans—Custom, 30 All. 181... ..	400

- Punjab Courts Act* (XVIII of 1884 as amended) S. 70 (1) (a)
 —Revision—Civil cases—Material irregularity—Ignoring the effect
 of document—Wrong interpretation of document, 9 P. L. R. 563 588
 —(VIII of 1884), secs. 40, 70 (a)—*Punjab Tenancy Act*
 (XVI of 1887), secs. 116 (a) 117, 158 (2) XVIII—Jurisdiction
 of Civil and Revenue Courts—Suit for a declaration that an
 orchard on a portion of the village common land was planted by
 plaintiff alone at his own expense—'Land suit'—Pleadings—Con-
 struction of partition proceedings—Question of title—'Mode of
 making partition'—Appeal, 9 P. L. R. 254 ... 227
 —(18 of 1889) S. 40 (1) (b)—Valuation of suit for decla-
 ration that alienation of land is not binding on the plaintiff—Suit
 after alienors death, 9 P. L. R. No. 79 ... 182
 —Sec. 70 (1) (c)—*Punjab Tenancy Act* (XVI of 1887), sec. 4
 (1)—Revision—Civil cases—Land suit—Suit for possession of
 unculturable land outside abadi—Question as to jurisdiction—Power
 of Chief Court to revise findings of fact relating to question of
 jurisdiction, 9 P. L. R. J. ... 182
 —Sec. 70 (1) (b)—Revision Civil cases—Question of law—
 Limitation not set up as defence Omission to consider if the suit
 is barred by limitation material—Material irregularity, 9 P. L.
 R. 429 ... 376
 —Secs. 77 (3) (d) and 100—Jurisdiction of Civil and Revenue
 Courts—Suit for compensation for branches of trees cut by defe-
 ndant—Allegations in Plaint, 9 P. L. R. 71 ... 184
Punjab Customary Law—Forfeiture of ancestral property of a cri-
 minal right of reversioner, 9 P. L. R. No. 19... 182
Punjab Land Act—S. 77—(3) (i) (p)—Jurisdiction of Civil and
 Revenue Courts—Suit for land-revenue—Suit for mortgage money
 advanced to a person to pay land-revenue—Estoppel—Plaintiff
 estopped from questioning jurisdiction of Court in which he filed
 suit, P. L. R. 1907 No. 98 ... 90
 —Retrospective effect of—Vendor and purchaser—Sale—Time
 for delivery of possession, 9 P. L. R. 5 ... 182
 —Sec. 3 (3) and 19—Sale of land by members of an agricul-
 tural tribe to non-members—Deputy Commissioner's orders gran-
 ting or refusing sanction not final—*Punjab Land Revenue Act*
 (XVII of 1887), section 16 (11)—No right of appeal or revision
 to a person not party to the transaction—Financial Commissioner's
 circular No. 3441 dated 5th June 1901 paragraph II (vii)
 3 Pun., W. R. 9 ... 498

<i>Punjab Military Transport Animals Act</i> ,—(<i>Punjab Act I of 1903</i>) Sections 27, 29, 30 and Rules VIII, XI, XII and XIII—There under—Non production of animal when an offence—Criminal Procedure Code Sections 238, to 236, 239, 435 and 439, 3 Punj. W. R. 66 CVII	
<i>Punjab Municipal Act (XX of 1891) Sections 92, 95</i> —Municipality —Sanction to erect building—Encroachment on public street, 9 P. L. R. 331 401	
— <i>Ss. 92 and 94</i> —Execution of—Partition—Wall over tharra, 9 P. L. R. 93 184	
— <i>S. 128</i> —Retaining wall or bank on a Hill Station—Muni- cipal Committees' power directing its removal—Renewal falls within repairs, 3 Pun. W. R. 79 CVIII	
<i>Punjab Pre-emption Act (II of 1905, Local), S. 2</i> —Pre-emption— Rights of members of vendor's tribe and other agriculturists, 9 Pun. L. R. 569 588	
—Operation of sale of agricultural land prior to May 1905— Right of vendee—Superior under the old Act but inferior under the new Act, 3 P. W. R. 18 183	
—Applicability of Regulation XVII of 1806—Conditional sale of agricultural land. 8 P. L. R. 1907, 65 43	
<i>Punjab Tenancy Act (XVI of 1887) S. 5 (1) (b)</i> —Landlord and tenant—Occupancy rights—Shamilat deh muafi—Resumption of statutes of owners of land in possession as tenants, 9 Pun. L. R. 584 588	
— <i>Ss. 53 and 60</i> —Landlord and tenant—Occupancy rights— Alienation of—Acquiescence of landlord—Omission to sue for cancelment of alienation, 9 P. L. R. 111 184	
— <i>Ss. 59, 111, 112</i> —Landlord and tenant—Occupancy rights —Succession, 9 P. L. R. 76... .. 183	
— <i>S. 59</i> —Landlord and tenancy—Occupancy rights—Custom —Succession rights—Collaterals sonless—Adopted son's associated brother, 9 P. L. R. 83 237	
— <i>S. 77 (3) (c)</i> — <i>S. 34 of Act XVII of 1887</i> —Jurisdiction of Civil or Revenue Court—Mortgagee and mortgagor—When no relation of landlord and tenant created—Promise to pay rent or interest in default, 3 Pun. W. R. 8 498	
— <i>S. 77 (3) (d)</i> —Jurisdiction of Civil and Revenue Courts Landlord and tenant—Occupancy rights—Suit for declaration that plaintiff is—Occupancy tenant having exchanged his land with the occupancy tenant, P. L. R. 1907, 110 90	

- *S. 77 (3) (j)*—Jurisdiction of Civil and Revenue Courts—
 Suit by a Chamber for recovery of heq-sep, 9 Pun. L. R. 582... 588
- Railways Act, S. 40*—"May" means "must"—Notice of claim under
S. 77 on whom to be served—Service on Traffic Manager insuffi-
 cient, 12 C. W. N. 450 ... 237
- *Ss. 47, 54, 172 and 140*—Ultra vires—Bye-law or rule
 made by any Railway Company inconsistent with or not authoris-
 ed by any of the provisions of the Act—Contract Act, *Ss. 152*
and 161—Condition on reverse of a Railway receipt for passen-
 ger's delivery of packages entered thereon, 3 P. W. R. 487 ... 588
- *S. 67*—Benefit of section not waived by Railway Company
 when they grant reserved accommodation under the rules, 30
 Mad. 417... 45
- *S. 72 (2)*—Does not affect rule of principal and agent, *S. M.*
Ry. Co. v. Anupchand (Appeal No. 24 of 1907, from order) ... IV 5
- *Ss. 72 and 54*—Delivery completion of—Non-liability as
 creditors—Rules framed by the Railway, 1 Sind. L. R. 78 ... 185
- *Ss. 77, 140*—Notice of claim "may be directed"—Claim
 against Railway administered by a railway company, 35 Calc. 194
 = 12 C. W. N. 165 ... 90 299
- *Ss. 77, 140*—Refund of an overcharge—Notice—Letter
 —Manner of service—Statement of fact not a proof of fact, 31 Bom.
 534 ... 46
- *Ss. 77, 144*—Claim for compensation for short delivery
 —Notice of claim on whom to be served—Service on Traffic ma-
 nager, 13 C. W. N. 24 ... 589
- Railway Company*—Negligence—Onus—Evidence Act Sec. 106 4
M. L. S. 251 ... 545
- *Receiver*—Purpose by, 1908 W. N. 37, 43 L. J. 74, 124
L. T. 334 = 52 S. J. 262 = 24 T. R. 296 ... III 11
- Leases—Application to set aside—Summary jurisdiction—Fro
 interesse suo—Receiver's account action—Practice, 12 C. W. N.
 1023 ... 499
- When appoint of a receiver as permissible in a testamentary
 suit—Probate and Administration Act. V of 1881 Section 55 3 P.
W. R. 318 ... 407
- Registered*—Document withheld by executant—Delivery of deed
 not necessary to complete the transaction, 8 P. L. R. 1907 No. 78 24
- Record of Rights*—Entry in effect of—Possession, suit for—Limita-
 tion 6 C. L. J. 670 ... 47

Registration—Property above Rs. 100 in value—Vendee not having a conveyance—Mortgage by, 4 Nag. L. R. 28 ...	287
—— <i>S. 17</i> —Compromise petition—Mortgage of immoveables—No-registration, 8 Cal. L. J. 245 ...	545
——Compromise petition—Constituting a lease and filed in a criminal proceeding, 12 C. W. N. 854 ...	452
—— <i>Ss. 17 (b)</i> —Partition deed—Award, P. L. R. 1907, No. III ...	91
—— <i>S. 17, sec. (d)</i> —Petition of compromise containing a recital of of a previous oral agreement for lease—Stamp—Registration—Evidence, 12 C. W. N. 50... ..	47
—— <i>Ss. 17 (d) and 49</i> —Lease in perpetuity—Mortgage with power to assign the lands, 4 M. L. T. 79	499
—— <i>Sec. 17 (o)</i> —Registration—Transfer of Property Act—Fishery rights, 35 Calc. 395	452
—— <i>S. 17</i> —Application of, 7 Cal. L. J. 492	340
—— <i>Secs. 17, 41, 49</i> —Attorney—Power of, to create a charge on immoveable property, 7 C. L. J. 149 = 12 C. W. N. 316 = 34 Calc. 845	133, 545
—— <i>Sec. 17</i> —Registration, 18 Kat. L. R. 196	538
—— <i>Sec. 17</i> —Securing bond—Civil Procedure Code, sec. 545—Transfer of Property Act, sec. 58—Order accepting security, 3 M. L. T. 317... ..	407
—— <i>Sec. 17 (1)</i> —Hypothecation clause in consent decree—Whether mortgage or charge—Transfer of Property Act, <i>Ss. 58, 110</i> , 12 C. W. N. 849	453
—— <i>S. 17</i> —Agreement of partition not registered oral evidence—Admissibility thereof—Admission in written statement, 4 M. L. T. 354	589
—— <i>Ss. 47, 50</i> —Sale of property—Subject to an unregistered mortgage—Notice of mortgage served after execution of sale deed but before registration—Purchaser whether bound, 5 A. L. J. 607	590
—— <i>S. 49</i> —Registration—Unregistered lease—Possession for more than twelve years under—Interest of a permanent tenant by adverse possession—Admissibility of lease in evidence to show nature of plaintiff's possession, 3 M. L. T. 187... ..	85
——Unregistered deed—Sale of the property hypothecated—Purchaser having notice of the mortgage—Property pre-empted by the defendant whether notice to pre-emptor, 5 All. L. J. 112	175
—— <i>Sec. 50</i> —Mortgage—Sale of property comprised in an unregistered mortgage—Liability of purchaser—Notice, 30 All. 238	500
—— <i>S. 60</i> —Effect of certificate, 14 Bur. L. R. 162	453

—S. 77—Jurisdiction of Courts—Munsiff's Court—Suit under sec. 77—Registration Act—Will disposing of property of the value of more than Rs. 2500—Court Fees Act, Set. II Art 17(6),—17 M. L. T. 873... ..	120
<i>Regulation (XVII of 1806), sec. 8—Mortgage by way of conditional sale—Condition as to payment of mortgage money by instalments and mortgage operating as sale in default of payment—Stipulated period; 9 P. L. R. 99</i>	174
<i>Regulation (VIII of 1827)—Hindu widow left in enjoyment of her father-in-law's property by acquiescence or by permission of his daughters for over 20 years—Successors of such widow—Adverse possession and permission—Possession—Civil Procedure Act, (XIV of 1882, sec. 645—Review of order granting heirship of certificate, 17 K. L. R. 261</i>	165
<i>Religious endowment—Powers of a Hindu testator to place limitations—Bequest followed by endowment, 5 All. L. J. 256 ...</i>	273
—Manager of Mutt—Liability for debt incurred by predecessor, 3 M. L. T. 97	116
—Kaltai—Purchase of land in the name of idol—Deed in the custody of donor—No reservation of—Power to appoint manager of the Kaltai, 18 Mad. L. J. 304	500
—Right to appoint manager, 29 All. 663... ..	7
—Endowment to take effect after a life estate, 30 All. 288 ...	529
<i>Religious Endowment Act (XX of 1863), ss. 14 and 20—Appointment of new trustee—Civil Procedure Code, s. 539, A. W. N. 1908 101</i>	299
— <i>Ss. 14 and 20—Suit claiming superior right to management of endowment—Parties—Leave to institute suit, A. W. N. 1907, 237=4 A. L. J. 74</i>	47
— <i>Ss. 14, 18. C. P. Code—S. 539. Suit for removal of duly constituted—Manager—Bengal Regulation 19 of 1816, 9 P. L. R. 20.</i>	183
— <i>Sec.—14. 18, Religious institution—Manager—Appointment and dismissal of jurisdiction of Civil Court—Civil Procedure Code Section 539—Sanction of Collector when necessary, 9 P. L. R. 576</i>	590
— <i>S. 14—Court may, by decree—Direct appointment by competent person of new trustee in lieu of the one removed and order the trustee removed to surrender possession to the trustee so appointed trustee to be removed when he keeps no proper accounts and makes false claims, 31 Mad. 212</i>	500

—S. 14—Power to appoint a new trustee—Code of Civil Procedure, sec. 539, 5 A. L. J. 191	238
Religious institution—P. L. R. 1907, No. 102	110
Religious trust—Appointment of successor to Sirfakir, 17 K. L. R. 227	166
—Debts—Loan incurred by trustee—Personal liability of trustee, 17 M. L. J. 615	185
Remand—Order of remand—After it is carried on—Maintainability of, 5 All L. J. 270	245
—Refusal of Court of first instance to examine all the plaintiffs witnesses—Appeal by defendant—Decreed—Remand, A. W. N. 1908, 140	397
—Examination of witness on commission, 32 Bom. 441	543
Remarriage—Effect of—On guardianship, 4 Nag. L. R. 25	215
Rent Act, Oudh, S, 126—Special contract, meaning of—Tenant of lands in a joint mahal taking a mortgage with possession of a share therein—Liability of to pay rent as tenant to the lambar-dar, 11 O. C. 75	401
—S. 7—Dispensation of putta not to be inferred from mere acceptance of muchilika, 18 Mad. L. J. 246	385
Resjudicata—Finding of Revenue Court that there was no proper tender of patta is not resjudicata in a Civil suit for rent for the fadi, 31 Mad. 62	239
—C. P. Code, Ss. 13, 43—Omission to set up a ground of offence in previous suit—Previous suit decided on preliminary ground—No res judicata, Abdulla v. Khanumji (S.A. 509 of 1907)	IV 5
—Issue decided in Lower Court and not dealt with in appeal, 1 Sind L. R.	238
—Two appellate decrees in similar terms—Appeal from one of such decrees only—Resjudicata, 29 All 730	133
—Suit to set aside a decree on the ground of fraud—Sale question raised in the suit already decided in proceedings under Section 108 of the Code of Civil Procedure, 29 All 608=4 A. L. J. 608	48
—In rent suits—Objection to terms of patta not taken in previous summary suit—Cannot be taken in suits for subsequent year, 3 Mad 498=3 M. L. T. 17	90
—Suit in Revenue Court to enforce acceptance of patah—Dismissal of—Suit in Civil Court to recover rent based on the tender of patah—If a bar, 3 M. L. T. 188	185
—Debutter estate—Representation in suit by person acting	

under the authority of shebiat—Res-jurisdicata—Identity of subject matter not essential—Judgment in previous suit—Admissibility—Evidence Act, Sec. 13, 12 C. W. N. 739 ...	402
———Suit for possession of Revenue paying land—Included by mistake in ejectment—Decree passed by a revenue Court—Punjab Tenancy Act XVI of 1887, S. 77, 3 P. W. R. 257 ...	327
<i>Re-sale</i> —To vendor, 9 P. L. R. 536 ...	497
<i>Restitution of conjugal rights</i> —Hindu—Husband and wife—Cruelty—Matrimonial offence—Safety of wife in peril, 34 Cal. 971 ...	48
<i>Resumption by Government</i> —Suit for possession—Village Chaukidari Act (Bengal Act VI of 1870) S. 51—Specific performance of of Contract—Suit for, 35 Cal. 346 = 7 C. L. J. 409 ...	252
<i>Revenue Sale Law</i> (Act XI of 1859) Ss. 27, 54—Title of purchaser, when vests title, when complete—Sale certificate, evidence of title—Purchaser takes subject to encumbrance—Power of proprietor to deal after default—Mortgage of non-existent property, 7 C.L.J. 387.	403
———Exc. 4—Houses and tank built by incumbrancer—Suit to avoid incumbrance—Assigne from purchaser—Right of suit—Limitation Act, art. 121, 12 C. W. N. 1029 ...	501
——— <i>S. 54</i> —Purchaser of Share—Right to recover from person who has acquired title by adverse—Previous to default, 12 C. W. N. 528 ...	340
<i>Revenue sale</i> —Purchase—Benami—Right of real purchaser to contest, 4 M. L. T. 316 ...	590
———Arrears of revenue—Kist—Payment after last day of one kist and of the last day of the next kist—Appropriation—Implication from amount paid—Notice—Revenue Sale Law (Act XI of 1859) Ss. 5, 13—Contract Act (IX of 1872) Ss. 59, 60, 35 Cal. 636	453
<i>Reversioners</i> —Agreement to divide reversion when it should fall in creates—No vested right but only right to claim specific performance, 30 Mad. 416 = 2 M. T. T. 443 ...	71
———When sale by limited owner for purposes binding on the reversion—Sale not to be set aside unless purchase money refunded—Right of presumptive—Reversioner to set aside such sale—Widow not trustee for reversioners, 31 Mad. 153 ...	436
———Estoppel—Res judicata—Compromise by father of reversioner—Son bound by father's compromise, P. L. R. 1907, 120 ...	133
———Suit by—Widow—Alienation party for binding purposes, not void—Setting aside—Terms, 18 M. L. J. 17 ...	216
———Reversioner's suit for declaration—Limitation suit barred against all—No fresh cause of action on the birth of each new	

member—Estate of—Daughter's sons in grandfather's property, 8 M. L. T. 275	...	...	...	...	...	436
——Right of reversioner of an occupancy tenant to restrain alienation of occupancy holding—Initial onus on reversioner—Shifting of such onus—Relevancy of proof of custom to restrain alienation of proprietary rights, 2 P. W. R. 351	...	...	...	...	...	111
——Reversionary heirs, suit by to set aside alienation by the widow, 3 M. L. T. 251	...	...	...	...	...	279
<i>Review</i> —of an order granting heirship certificate, 17 K. L. R. 261	...	...	...	...	...	166
<i>Revision</i> —Criminal case—Judicial proceeding—Punjab Laws Act (IV of 1872) S. 45—Vagrant order requiring foreign vagrants to leave—District 9 P. L. R. 109	...	...	...	...	...	XLIV
——Small Cause Courts Act, S. 25—Revision—Powers of High Court—Civil Procedure Code, Ss. 108, 622—Setting aside ex parte decrees—Condition precedent, 5 A. L. J. 275 = 1908, A. W. N. 141.	...	...	...	...	...	404
——Practice—Interference of High Court, 12 C. W. N. 16	...	...	...	...	...	49
——Duty of High Court in revision—Omission to examine the accused, 4 L. B. R. 143 = VII, Crim. L. J. R. 422	...	...	...	...	...	LXXXIV
——Interference in revision—Order technically wrong but one what the applicant himself assented to, 13 Bur. L. R. 369	...	...	...	...	...
——Practice—Punjab Chief Court, 9 Punj. L. R. 448	...	...	...	...	...	C
——Criminal cases—Acquittal on facts—Discretion—Expunging findings from judgment—Sanction to prosecute—Approver—Pardon—Withdrawal of, 1 P. L. R. 507	...	...	...	...	...	C
——Practice, 3 Pun. W. R. 72	...	...	...	...	...	CV:II
——Practice—Interference though there be other remedy, 8 Cal. L. J. 245	...	...	...	...	...	546
<i>Riparian owner</i> —Irrigation—Prescription—Custom—Vicinity—Limitation Act, S. 26, art. 47, 35 Cal. 851	...	...	...	...	...	546
<i>River</i> —Public navigable river, fishery in arm of the river—Ceasing to be an arm of a flowing river, effect of, 12 C. W. N. 559	...	...	...	...	...	404
<i>Sale of tenants</i> —Crop for default of landlord—Balance—Benefit of Presumption, 4 M. L. T. 65	...	...	...	...	...	484
<i>Sale</i> —Fraud—Setting aside of sale—Respondent in England—Service—Practice	...	...	...	...	...	591
——Sale under, setting aside sale—Appropriation of payments by Collector—Contract Act, Ss. 59, 60, 12 C. W. N. 646	...	...	...	...	...	403
——Sale of immoveable property purchased by decree-holder—Suit to obtain possession by assignee of auction purchaser—Civil Procedure Code, S. 244—Practice—Full Bench reference—Bench	...	...	...	...	...

not constituted—Powers and duties of a division Bench, 3M.L.T.288	274
———Certificate—If necessary to be filed in suit for establishment of title by auction purchaser—Decree against landlord, if admissible in evidence against tenant, 7 C. L. J. 384	404
———Sale certificate—No possession either actual or symobolical, 4 M. T. T. 180	CXII
<i>Sanction</i> —Pending Civil appeal, 18 K. L. R. 196	538
<i>Second appeal</i> —Delay in presentation—Appeal dismissed—High Court's power to extend time for payment, 4 M. L. T. 341	591
———Mixed question of law and fact, 18 K. L. R. 5	378
———New point of Registration, 4 M. L. T. 79	496
———Finding in favour of existence of custom based upon insufficient evidence—Second appeal—Practice, 30 All. 311	547
<i>Sentence</i> —Date of commencement of sentence of imprisonment antedating sentence—Nominal sentence—Detention under trial—Custody, 4 L. B. R. 652=7 Cr. C. J. 453	C
<i>Service tenure</i> —Digwar of Ghat Tasra in Jheria—Police duties—Government control—Rights of the Zamindar—Right sub-soil—Mokurari lease of under ground—Rights granted to Digwar, suit by Zamindar questioning Government a necessary party, 12 C. W. N. 198	184
<i>Shebait</i> —Decree—Interpretation of decree—Shebiat's position, 35 Cal. 691	501
———Trespass by—Mesne profits—Liability of idol for—Shebaait's position—Representation of idol, 12 C. W. N. 550=7 C. L. J. 514	405
<i>Shebaitship</i> —Hereditary, alienation of—Alienation by will or inter vivos, 35 Cal. 226...	279
<i>Shias</i> —Succession, A. W. N. 1908, 149...	336
Small Cause Courts (<i>Presidency Act XV of 1882</i>), <i>S. 19 (k)</i> —Suit to enforce arrears of annuity—Suit to enforce a trust, 12 Bom. L. R. 758	501
——— <i>S. 69</i> —Negotiable Instrument Act <i>S. 84 (2)</i> —Question whether cheque was presnted within a reasonable tims is a question of fact and cannot be referred to the High Court by Presidency Court of Small Causes, 81 Mad. 364=4 M. L. T. 89...	497, 591
———(Provincial), <i>Ss. 16, 32 (2)</i> —Civil Procedure Code, <i>S. 646B</i> .—Institution of a suit before a Munsif—Exercising Small Cause Court powers up to a certain value—Trial by his successor invested with higher powers, 12 C. W. N. 167	91
——— <i>Ss. 17 and 25</i> —Application to set aside on ex parte decree	

—Necessity of depositing amount of decree or giving security—Revision, A. W. N. 1908, 141=5 A. L. J. 295	405
—S. 25—Finding not according to S. 203—Civil Procedure Code—Interference—Business carried on by co-pascener—Presumption, 1 Sind L. R. 118	186
—S. 25—3 M. L. T. 239	239
—Art. 8—Judge of the Small Causes, meaning of, if it means and includes Munsif and other Judicial officers vested with Small Cause Court's power, 7 Cal. L. J. 407=35 Cal. 677	405, 501
—art. 18—Claim for recovery of moveable property deposited with another for safe custody, 3 P. W. R. 121... ..	239
Solicitors—Taxation of bills—Practice, 12 C. W. N. 1102	547
—Specific performance of contract to sell undivided share of joint family property, 3 N. L. R. 160	21
Specific Relief Act, S. 8—Criminal Procedure Code, S. 145—Possessory suit—Effect of order of a Criminal Court—Revision, 30 All. 331	591
—Ss. 20, 27 (b)—Specific performance—Sale of immoveable property by registered deed—Vendee having notice of a previous agreement to sell made by vendor with another person—Compensation for breach of agreement. 9 P. L. R. 297... ..	406
—S. 21, cl. (a)—Suit for recovery of money agreed to be paid on a mortgage—Debt—Specific performance of Contract to lend money, 11 O. C. 217	454
—S. 21—Arbitration—Contract containing condition as to referring disputes to arbitration, 8. P. L. R. 1907, 70	49
—S. 31—Rectification of sale-deed upon which plaintiff's title rests, 11 O. C. 93... ..	406
—S. 35—Property transferred under illegal award—Stifling Criminal Prosecution—Right to recover back—Particeps criminis—Contract Act, S. 28, 1 Sind L. R. 47	186
—S. 42—Contract—Suit for money lent—Payment of money, the sole relief prayed for—Decree for possession given by munsif consequential relief, 3 M. L. T. 309	407
—S. 42—Declaration—suit—Possession of plaintiff—Proof—Custom—Succession—Daughter—Collaterals in the seventh degree—Onus probandi—Chohan Rajputs of Kharwan village—Jagadhri Tahsil, Amballa District, 9 P. L. R. 302	407
—Sec. 42—Possession—Suit for declaration of title—Application for partition in Revenue Court objection—Land Revenue	

Act, (Act III of 1901) Sections III 233 (k), 5 A. L. J. 614	...	592
—S. 42—Proviso—One Plaintiff out of possession—Other plaintiff in defendant's right—Declaratory suit—Second suit for possession, 5 A. L. J. 640	... ..	592
—S. 42—Partition—Objection to title—Declaratory suit in Civil Court, A. W. N. 1908, 249	... ..	596
Stamp Act —(II of 1899) S. 2 Cl. (15) Undivided brothers—Documents purporting to be lists of properties—Each document signed by the brothers excepting the one retaining it—Each document formed the title of the brother retaining it with respect to his share—Instrument of partition stamp, 32 Bom. 509	... ..	542
—S. 35—Promissory note duly stamped—Suit on oral agreement contained in promissory note—Evidence—Admission—Oral evidence as to contents of document, 8 P. L. R. No. 83	... ..	49
—S. 35—No secondary evidence admissible the receiving which will be to give some effect to an unstamped document, 30 Mad. 386	... ..	49
—S. 36—Insufficiently stamped—Admissibility of instrument when not to be questioned—Acknowledgment evidencing a fresh Contract Stamp Act, 11 O. C. 152	... ..	407
—S. 40, 44, 48 and 55—Stamp—Improperly stamped document tendered in evidence—Stamp duty from whom recoverable, 30 All. 271 = 5 A. L. J. 262	... ..	407, 547
—Art. 5 cl. (b)—Account—Stipulation to pay interest—Acknowledgment of debt, 35 Calc. III 299	... ..	299
—Art. 55 and 23—Conveyance—Release, 10 Bom. L. R. 733	... ..	502
Succession —To property lying within British territory dispute as to—Hill Tipperah Raj—Declaration of contingent right, suit for, if maintainable—Specific Relief Act, Section 42, 8 C. L. J. 12 = C. W. N. 77	... ..	372
— Succession Act , S. 3—Construction of Will—Bequest to daughter—Absolute estate, 12 C. W. N. 44	... ..	91
— Sa. 212 and 234 —Amending Act, VIII of 1903—Application to extend certificate outside the province—Revocation of the grant Court Fees Act, Section 19 (C) 1 Sind L. R. 177	... ..	239
Succession Certificate Act , Sec. 4—Deferred dower—Debt—Mahomadan Law, 5 A. L. J. 598 = 30 All. 315	... ..	547, 598
—Joint decree holders, right to execute a decree passed in favour of—Execution of decree by a survivor of two joint decree-holder—Heir of a decree-holder right of to execute a decree, 10 O. C. 378	... ..	186
—S. 4—Debt—Meaning of Section 90 of the Transfer of		

- Property Act**—Application under for money decree—Debt when
 accrues due—Applicant plaintiff execution of decree—Nature of
 joint family debt if to appear on the face of the bond joint family
 debt, Cal. L. J. 658... 408
- S. 4—Application by heir of mortgage for supplementary
 decree—Succession certificate if necessary "Debt"—Transfer of
 Property Act, S. 90. 12 C. W. N. 145 ... 91
- Successor to impartible Zamindari not entitled to recover
 debts due to his predecessor without a certificate under the Act,
 30 Mad. 454 ... 56
- Succession**—A suit by the beneficiary for the benefit conferred in
 the absence of Probate or Letters of Administration, 31 Mad. 187 506
- S. 19—Section 3 of Act XXIV of 1839 and rule X of
 rules framed thereunder—General clauses Act of 1868 S. 2 (12)—
 Agent to the Governor Vizagapatam is a District Judge within S.
 19 of Succession Certificate Act and an appeal lies to the High
 Court against his order—Scope of inquiry in proceedings under
 Succession Certificate Act, 31 Mad. 362=14 M.L. J. 252=3 M. L.
 T. 264... 245, 408, 593
- Suit**—Maintainability of—Right to man—Pan, 3 Nag. L. R. 131 ... 50
- Maintainability of—Cause of action—Assignment—Chose in
 action—Right of assignee to sue when transfer is conditional, 9
 P. L. R. 63 ... 187
- Right to sue—Incumbrances suit to avoid—Purchaser from
 a purchaser at a revenue sale—Putnidar—Permanent settlement,
 tenure from before long possession—Presumption—Direct evidence,
 8 C. L. J. 177 ... 502
- Suit—Whether a firm can bring, 14 Brr. L. R. 56 ... 409
- Encroachment—Parsi Community—Evidence of conduct of
 founders, subsequent to acquisition of land, 35 Cal. 478 ... 360
- Maintainability against local authority—Malicious Act, (1907
 8. J. 823 T. 11 L. J. 547) ... III 2
- For declaration of right to receive fees as "Chowdhris" of
 certain Bazars—Suit not maintainable, 29 All. 683 ... 92
- Party—Co-putnidar and not durputnidar necessary party,
 7 Cal. L. J. 449 ... 395
- Maintainability of—Fraud—Decree on compromise, 8
 Cal. L. J. 260 ... 548
- Maintainability—Sale in execution of decree on simple
 mortgage—Purchaser at such sale cannot maintain suit for posse-

ssion against purchasers of the equity of redemption subsequent to mortgage but prior to suit who were not joined to parties, 30 Mad. 500	...	...	...	...	92
—Suit for possession—Failure of cause of action—Proper decree to be made in such a case—Possibility of malia concludendi being the same; in other actoin give tho Court—No power to pronounce upon them, 7 C. L. J. 44	...	...	...	...	88
Suits—Valuation Act, (VII of 1887)—Pre-emption suit—Valuation of suit—Value of land—Consideration for sale exceeding pecuniary limits of jurisdiction of Court—Procedure, 4 P. L. R. p. 436	4				409
—Ground of revision, 2 P. W. R. 466	...	...	...	...	119
— <i>Sec 3</i> —Jurisdiction of Civil Court—Valuation of suit—Pre-emption suit—Suit for possession of land assessed with land revenue—Definite protion of revenue paying khata, 9 Pun. L. R. 561					593
Surety—Principal and surety—Suit to recover debt from surety—Admission by principal—No evidence of amount of debt as against the surety, A. W. N. 1907, 293	...	...	...	...	50
Surety of Guardian—Liability—Contract Act, Sec. 128—Property not specified in the application for appointment of guardian—Dealings with Guardians and Wards Act Sec. 35—Assignment of bond if must be in writing—Mistake and misrepresentation if ground for avoinding bond—Minor—Estoppel 12 O. W. N. 481	...				240
—Discharge of—Promissory note, 52 S. J. 131	...	...	...	...	III 8
Survey Maps—Evidence of title, 7 C. L. J. 414	...	...	...	...	272
Talukdar—Non—Talukdari—Property—Rules of Succession—Applicable to Talukdar—Acquisitions of succession, 11 O. C. 250	...				502
Taxation, S. 15—Attorney and client—Solicitors' cost suit for—Limitation—Order for taxation—Practice, 35 Cal. 171	...				288
Tenancy—in common—Ouster—Damages, 18 M. L. J. 254	...				409
—Tenant can have no prescriptive right during tanancy, 4 Nag. L. R. 104	...	...	...	...	374
Tort—Negligence—Allowing storm—Water to flood another's land, 10 Bom. L. R. 448...	...	...	...	...	409
—Act done under statutory power—Liability—No negligence, West v Bristol Tram, Co. 52 S. J. 393=124 L. T. 524	...	...	...	...	IV 8
—Discharge of one joint tort feasor effect of, 52 S. J. 684	...	...	...	...	III 18
—Right of support—No compensation for risk of future damages, 42 L. J. 655, 52 S. J. 93 (1907) W. N. 249=124 L. T. 128	...	...	...	...	III 4
—Malicious abuse of process—Damage attachment under Sec.					

483 C. P. C. Insufficient grounds—Special and general damages—Whether valice need be proved, 4 M. L. T. 303 ...	593
— Suit against joint tort—Feasors—Compromise between plaintiff and one defendant—Such compromise no bar to decree against the other defendants, A. W. N. 1908, 190 ...	454
<i>Trade name</i> —Passing of goods, 124 L. T. 195 ...	II 18
— <i>Trade Mark</i> —Mark indicating manufacturer—Infringement, calculated to deceive—Passing off goods—Injunction—Admissibility of evidence of intent to deceive, 35 Cal. 811 ...	300
<i>Transfer</i> —For Illegal purpose—Suit to recover possession by transferor—Onus of proof, 4 Nag. L. R. 26 ...	240
— Transfer to another Court—Power of Court to which decree has been transferred to grant permission to continue execution proceedings begun upon the application of a decree-holder since deceased—Civil Procedure Code S. 232, 11 O. C. 112 ...	318
<i>Transfer of Property Act S 6 (d)</i> —Property restricted in its enjoyment to the owner personally—Jajmanibahis, A. W. N. 1907, 282 ...	50
— <i>Ss. 10, 12 and 126</i> —Construction of document—Gift subject to a power of revocation, A. W. N. 1907 278—4 A. L. J. 704 ...	51
— <i>Sec. 41</i> —Application for a personal decree against mortgagor Limitation Act article 116, 30 All. 388 ...	594
— <i>S. 41</i> —Suit for—Ostensible owner—Degree for foreclosure on a mortgage by, 11 O. C. 26 ...	235
— <i>Sec 43</i> —Estoppel—Representation Transfer or subsequent acquisition of rights 7 C. L. J. 281 ...	409
— <i>S. 43</i> —Transfer of Inam land—Inam inalienable subsequent enfranchisement, effect of, 18 Mad. L. J. 247 ...	410
— <i>S. 43</i> —Mortgage—Decree for sale—Portion of property compromised in a mortgage acquired by a mortgagor subsequently to decree, A. W. N. 1908, 155 ...	410
— <i>S. 48</i> —Equitable mortgage, 14 Burma L. R. 211 ...	500
— <i>S. 52</i> —Lis pendens—Mortgage suit—Interest in moveable property—Contentions suit, 8 C. L. J. 103 ...	455
— <i>S. 52</i> —Lis pendens exists until the final decree in appeal is passed, 31 Mad. 268—4 M. L. T. 77... ...	503
— <i>S. 52</i> —Lis pendens—Hindu Law—Hindu widow—Mortgage of husband's estate adversely to adoptive son—Suit to enforce mortgage against adoptive son—Contentions suit—Application for leave to sue <i>id forma pauperis</i> —Civil Procedure Code, S. 410 A. W. N. 1908, 29... ...	134

- S. 52—*Lis pendens*—Pre-emption—Resale to a co-sharer after institution of a suit for pre-emption, A. W. N. 1908, 221 ... 502
- See. 52—*Lis pendens*—Sale during the pendency of suit—Service of summons not effected—Effect of, 5 A. L. J. 477 ... 454
- S. 53—Fraud on creditors—Transferee rights of "Gova fith"—Sale by debtor with interest to defeat or delay creditor—Fraudulent intent of vendor shared-in by purchaser—Fraudulent—Preference—Sale in consideration of existing debt—Sale of entire estate of debtor—Frame of suit—Appeal, 34 Calc. 999 ... 51
- S. 53—Mortgage—Assignment of fictitious mortgage—Subsequent mortgage for consideration—No interest passes to the transferee—Rights of assigned as against mortgagor and subsequent mortgagee, 5 A. L. J. 305 ... 411
- S. 53—Mortgage—Part of consideration fictitious—Intention to defeat or delay creditors—False case setting up of, of a later stage—Effect, 4 A. W. N. 761... ... 411
- S. 53—Good faith—Transfer not in good faith voidable even though with consideration—Single creditor entitled to maintain proceedings to avoid fraudulent transfers, 11 O. C. 197 ... 410
- S. 53—Mortgage—Assignment of invalid mortgage—Assignment of invalid—Mortgage—Right of assignee as against mortgagor and subsequent mortgagee for consideration—Maxim—*Qui prior est tempore patior est jure*, 30 All. 297 ... 548
- S. 54—Sale—Non-payment of consideration—Sale nevertheless complete, A. W. N. 1901, 38 ... 135
- S. 55—Vendor lien of unpaid—Lien is not possessory but only a charge—Adverse—Possession, 30 Mad. 524. 23 M.L.T.110 92,135
- S. 55 (2)—Defect in title—No fraud, 13 Burma L. R. 393 ... 184
- S. 56, 57, 81 and 83—Mortgage—Subsequent sale of one of the mortgaged lands bona fide purchaser without notice—Whether entitled to marshalling, 3 M. L. T. 287=18 M. L. J. 229 ... 413
- S. 58—Suit for personal remedy, 14 Bur. L. R. 159 ... 455
- S. 59—Provisions of section not sufficiently complied with when witnesses not present at execution but attest son executant's acknowledgment of signature, 31 Mad. 215 ... 502
- S. 59—Attestation—Acknowledgment of signature—Attestation whether valid—Succession Act. S. 50 CL (3), 3 M. L.T. 300 ... 294
- S. 59—"Attest"—Mortgage—Execution, 18 M. L. J. 213 ... 413
- S. 59—Deed—Execution of deed—Absence of attestation

—Signature by the writer of the deed—Signature by Registrar under Sec. 63 R of the Deccan Agriculturists Relief Act—Not valid—Attestations, 10 Bom. L. R. 943	594
—S. 59, 100—Mortgage—Deed not attested as required by § 59 cannot create a charge under S. 100, 31 Mad. 337 ...	594
—S. 59—Principal—Whether includes interest, 4 Nag. L. R. 90	412
& 59, Cl. 2—Mortgage with possession—Second mortgage under an unregistered deed—Delivery of property stipulation postponing redemption till payment of the additional advance—Not binding on purchaser—Registration Act, S. 49, 11 O. C. 243 ...	504
—S. 62, 83—Position of mortgagee in possession after the tender or deposit of mortgage money, 31 Bom. 527	8
—S. 67, 96, 97—Person holding to mortgages on the same property the first usufructuary and the second simple, can bring the property to sale in suit on the second mortgage free of the first mortgage, 30 Mad. 408	38
—S. 68 (c)—Mortgage—Construction of document—Power of sale in a usufructuary mortgage, 30 All. 162 = 5 A. L. J. 183 = 1908 A. W. N. 70	174, 229, 418
—S. 75, 85 and 86—Two successive simple mortgagees right of second mortgagee to decree for sale subject to the first mortgage, 3 M. L. T. 397	455
—S. 78—Priority—Gross negligence—Failure to get possession of title deed does not necessarily amount to gross negligence where system of registration exists—Delay—Effect of, in a registration of documents, 31 Mad. 7	2
—S. 85—Mortgage—Suit by—Notice—Absent party's interest when found—Representation sufficient—Limitation Act, Sch. II Art 12 (a)—Applicability of, 6 O. L. J. 719	135
—S. 85—Parties claiming adversely to mortgagor if necessary parties—Contract Act. Sec. 23, 12 C. W. N. 94	92
—S. 85—Mortgage—Suit—Parties—Omission to join all the heirs of a purchaser of mortgaged property within time—Effect—Limitation—Notice—Apportionment of debt, 12 C. W. N. 111	456
—S. 85—Mortgage—Suit for sale on mortgages—Parties, 30 All. 240	504
—S. 85—Parties adverse claimants—Whether may be joined—Suit for sale, 5 A. L. J. 604	595

—S. 85—Parties.—Puisne mortgagee necessary parts—Decree obtained without impleading him void—Civil Procedure Code S. 32, 278, 280 and 283, 3 Pun. W R. 492	541
S. 85—Mortgage releasing mortgaged property cannot enforce entire claim against the other properties—Section 85 of the Transfer of Property Act does not necessitate the dismissal of a suit where no relief claimed against persons not joined as parties, 31 Mad. 332	585
—S. 88—Decree for sale “Recover if necessary from the mortgagor”—Construction, 3 M. L. T. 385... ..	412
—S. 88, 89—Mortgage decree under S. 88 cannot impose personal liability for costs—Such liability should be enforced under S. 90, 2 M. L. T. 359	39
—S. 88 and 90—Civil Procedure Code, Section 258—Execution of decree—Alleged payment out of Court not certified, 30 All 248	504
—S. 88, 93—Decree for sale—Time fixed for payment, effect of—Payment after time but before completion of sale—Mortgagor’s rights—Mortgage decree for sale—No conversion into decree for foreclosure—Interest—Rate of—Mortgage decree form of, 18 M. L. J. 259	413
—S. 89—Limitation Act Art 179—Application under S. 49 of the Transfer of Property Act is at application for execution and S. 235 of the Code of Civil Procedure applies to it—Unverified—Application substantially in accordance with Law sufficient to save limitation, 31 Mad. 68	241
S. 89, 104—Mortgage decree—Execution—Adjustment—Power of Executing Court—Enforce—Civil Procedure Code S. 244, 258, 12 C. W. N. 282	136
—S. 90—Application for a personal decree against mortgagor—Limitation, A. W. N. 1908. 161.	414
—S. 90—Costs—Mortgage decree—Decree of Cost if part of other properties, 8 C. L. J. 152	436
—S. 90—Decree ex parte—Mortgage—Personal decree—Inherent—Power of Court to set aside ex-parte decree—Succession Certificate Act, Sec. 4, 35 Calo. 767	548
—S. 91—Redemption of mortgage—Reversionary heirs of deceased husband of Hindu widow, not entitled to redeem mortgage made by husband, A. W. N. 1908 25=5 A L. J. 131 ...	504, 595
—S. 91—Permanent lease holder—Right to redeem—Terms of lease, 6 C. L. J 708	29

- S. 91—Mortgage—Fixed rate—Tenant—Suit by Zamindar to redeem a mortgage made by a fixed rate—Tenant on the death of the tenant without heirs, A. W. N. 1908, 210 ... 456
- S. 92 and 94—Redemption—Subsequent suit for profits received by mortgagee barred, A. W. N. 1907, 281—30 All. 35 40, 215
- Suit for redemption—Practice—Plaintiff suing as sole heir—Death of plaintiff—Abatement of suit, 4 A. L. J. 783 ... 36
- S. 93—Decree execution—Decree nisi—Decree absolute—Civil Procedure Code, S. 93, 10 Bom. L. R. 1057 ... 595
- S. 99—Civil Procedure Code, S. 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree, 30 All. 146 ... 414
- S. 99—Transferee decree-holder cannot bring to sale property which the decree-holder could not bring to sale under S. 99 of the Transfer of Property Act, 31 Mad. 33 ... 242
- S. 99—Mortgage—Sale of mortgagee property in execution of a decree for costs—Sale confirmed—Subsequent suit for redemption, A. W. N. 1908, 48 ... 187
- S. 92—Civil Procedure Code, S. 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree, A. W. N. 1908, 49... 188
- S. 93—Assignee of a money decree obtained by the mortgagee—Right of to sell in contravention of S. 99—Transfer of Property Act—Estoppel—Civil Procedure Code, S. 232, 11 O. C. 231... 457
- Ss. 99, 67, 109—Mortgage—Attachment by mortgagee—Application—Suit, 10 Bom. L. R. 274 ... 242
- S. 99—Sale in execution of decree—Money decree—Sale of mortgaged property—Setting aside sale—Confirmation of sale—Fraud—Civil Procedure Code, S. 244, 35 Cal. 61... 300
- S. 107—Lease—Registration—Agreement to lease unregistered—Suit for damages for breach, Sankalchand v. Abdul Rehman, C. Rev. App. 153 of 1903 ... III 11
- S 108 (j)—Assignee of lease, liability of to lessor—Liable for rent—From date of assignment and not from date of obtaining possession—Principle applies to agricultural lease, 30 Mad. 410 52
- S. 111—Forfeiture—Ejectment—Co-lessors—Suit for ejectment by one set of co-lessors, 35 Cal. 807... 549
- S. 111—Denial of relation and setting up third party as zamindar in a previous suit by some of the landlords—Joint

lessors, putting an end to tenancy—Transfer of Property Act, S. 8—Intention to determine, 7 C. L. J. 473	...	...	330
——Disclaimer—Forfeiture, 12 C. W. N. 525	...	...	285
——Denial of title of landlord, effect of—Forfeiture of notice to quit, 3 M. L. T. 265=18 M. L. J. 153	...	...	285
—— <i>Ss. 112, 123</i> —Gift of immoveable property—Deed—Registered after the donor's death—Practice—Remand taking of evidence by the District Court permissible, 10 Bom. L. R. 536	...	...	415
—— <i>S. 116</i> —"Consent"—Holding over—Position of tenant—holding over and his representatives at sufferance—Trespassers—Limitation Act, arts. 139, 144—O. P. Code, Sa. 281, 283, 18 M. L. J. 26	...	...	242
—— <i>S. 123</i> —Registration—Gift of immoveable property—Acceptance of the gift—Registration of the deed, subsequent to acceptance, 32 Bom. 441...	...	...	549
—— <i>S. 87</i> —Foreclosure decree, sums paid by mortgagor tenants—Order absolute application for, in lieu of a portion of the decretal amount—Money paid by the mortgagor to discharge a portion of the decree, 10 O. C. 354...	...	...	187
<i>Trees</i> —Landholder's and tenant's rights as to trees on tenant's holding, A. W. N. 1908, 51=5 A. L. J. 89	...	...	169
——Landholder and tenant's right as to trees on tenant's holding, 80 All. 134	...	...	330
<i>Trespass</i> —Acts done under orders of lawful superior responsibility for—House—Search—Trespass abinitio—Trespass on person—Master and servant—Loss of service, C. W. N. 982...	...	...	505
——Remedy—Injunction, 12 C. W. N. 1066	...	...	549
<i>Trust</i> —Religious endowment—Uncertainty income [of villages to be applied to "charitable purposes" at a dharamsala which the settlor had found, A. W. N. 1908, 34	...	...	136
——Unauthorized investment—Profits made good by trustee to the tenant for life, 1908, W. N. 86; 52 S. J. 240. 43 L. J. 72; 124 L. T. 325...	...	...	III 12
——Trustees power to invest—No express prohibition, 49 S. J. 343; 1908 W. N. 131	...	...	III 14
——Charitable trust—Uncertainty, 52 S. J. 261; 24 L. T. 358; 1908, W. N. 400; 24 T. R. 308	...	...	III 12
——Gift to charitable society—Purpose to be determined by charity, 52 S. J. 262	...	...	11
——Revocation—Deed construction—Construing deed as well, 18 M. L. J. 450	...	...	596

——Discretion to the trustee—Right of beneficiary to sue for an account, 1 Sind L. R. 263	...	...	...	...	550
——Religious endowment—Uncertainty—Income of villages to be applied to "charitable purposes" at a dharamshala which the settlor had founded, 30 All. 111	...	...	...	...	300
<i>Trusts Act, Sec. 5, 81</i> —Request to legatee with oral directions in testator's lifetime for the disposal of the property—Rule of English Law that such legatee is bound by the trusts so declared by testator—Applies in India under S. 5 of the Trusts Act—S. 81 of the Trusts Act does not apply to such cases—Maintainability under S. 187 of Succession Act of a suit by the beneficiary for the benefit conferred in the absence of Probate or Letters of Administration, 31 Mad. 137	...	...	...	...	506
——S. 34—Public Charitable Trust—Applicability of—Corporation sole—Effect of nominating Collector, &c., as Trustee, 1 Sind L. R. 218	...	...	...	...	415
<i>Trusts</i> —Will—Who—Executors of the last surviving trustee, 77 L. J. Ch. 12	...	...	...	...	III 8
——Suit by—Decree in plaintiffs favour—Appeal by defendants—Plaintiff's application to alter the judgment so as to defeat his own action—New plaintiffs, joining of—Surrender of a decree in his favour by a trustee—Betrayal of trust—Refusal of the Court alter the decree, 10 Bom. L. R. 781=12 C. W. N.=31 Mad.	...	...	...	...	505
<i>Undue influence</i> —The Indian Contract Act—Amendment Act (IV of 1899) S. 2—Presumption—Landlord and tenant dominating the will, 8 C. L. J. 135	...	...	...	...	457
<i>U. P. Land Revenue Act</i> (III of 1901) Local, Sec. 76, 77—Superior proprietor—Contract for revenue with inferior proprietors—Effect of enhancement of revenue, 4 A. L. J. 807	...	...	...	...	136
——S. 36—Application to fix rent—Suit to recover rent on alleged agreement—Res judicata, A. W. N. 1908, 250	...	...	...	...	596
——Sec. 56, 86—Gharghanna whether a cess, 5 A. L. J. 361	...	...	...	...	416
——Sec. 75, 76 and 78—Inferior proprietor—Liability for payment of Government revenue, A. W. N. 1908, 27	...	...	...	...	136
——Sec. 110, 111, 123 (k)—Partition—Objections not raised before Revenue Court—Suit in Civil Court for declaration of title—Jurisdiction, 29 All. 604	...	...	...	...	52
——Sec. 144 84 (b)—Agra Tenancy Act S. 152—Lambardar and co-sharer—Remuneration of lambardar, A. W. N. 1908, 2...	...	...	...	...	137
<i>United Provinces Municipalities Act</i> S. 3 (4)—Definition "Street,"	...	...	...	...

A. W. N. 1908, 15—5 A. L. J. 45	137
——— <i>S. 17</i> —Suit against Municipal Board—Misdescription of defendant, A. W. N. 1908, 165	416
<i>Valuation</i> —Of declaratory suit to protection [reversionary right in the alienation of revenue paying land for purposes of jurisdiction—Course of appeal and revision—Punjab Courts Act (XVIII of 1884) as amended by Act (XXV of 1899) Ss. 40 and 70—Rule 1 (b) of the Rules made under suits—Valuation of suit—Mortgage by way of conditional sale—Suit for possession of land assessed to land revenue—After foreclose of mortgage, 8 P. L. R. 1907, 66	52
———Valuation of suit—Forum of appeal—Bengal N. W. P. and Assam Civil Courts Act (XII of 1877) S. 21—Suit for recovery of land and mesne profits—Intetest on mesne profits—Court Fees Act (VII of 1870), S 11, 34 Cal. 954	3
<i>Vendor and Purchaser</i> —Auction sale under power of sale in a mortgage—Condition of sale depreciatory of mortgagor's title—Solicitor for mortgagee acting for purchaser in preparation of deed of conveyance—Constructive notice—Conduct of mortgagees at sale including bidders to leave—Knowledge of purchaser of such circumstances—Notice—Proviso in mortgage to protect purchaser—Transfer of Property Act S. 169, 31 Bom. 566	137
———Personal covenant—Indemnity against disturbance to vendee does not ensre for the benefit of pre-emptor, 9 P. L. R. 43	188
<i>Vendor and Vendee</i> —Mortgage—Rights and position of Vendee of a share in joint mortgaged property when it is redeemed in part or whole by his money amendment of plaint in further appeal 3 P. W. R. 236	416
<i>Wager</i> —New contract to pay, W. N 145; 52 S. J. 551	III 15
———Post dated cheque for a bet—Dishonour—Suit on, 24 T. R. 338	III 12
<i>Wahabis</i> —Right of to worship at sunni mosques—Restrictions to its exercise—Special dedication of mosque for use of a particular sect—Validity—Quere, 12 C. W. N. 289	127
<i>Waiver</i> —Leave to sue—Letters Patent (1885) Cl 12, 35 Cal. 394—12 C. W. N, 705	326
———Point in second appeal, 8 Cal. L. J. 267	532
——— <i>Waiver</i> —Mortgagee's accepting payment of mortgage money from vendee, 3 P. W. R. 235	235

— <i>Waiver</i> —Pre-emptor receiving from the vendee—Mortgage money due to him, 9 P. L. R. 101	180
<i>Wajib-ul-arz</i> —Interpretation of—Intiquat—Conditional sale, 4 A. L. J. 314	89
—Construction of Document—House tax—Cess—Rent, 30 All. 235.....	507
—Construction of—Custom or Contract Act—Partition—Co-sharer 5 A. L. J. 539	497
—Construction—Hindu widow's brothers not entitled to pre-empt purchaser estopped from denying the sale, 5 A. L. J. 182.	179
—Construction of document "Intiqal", 1908 A. W. N. 19 ...	181
—Construction of document—Rights of ex-proprietor in house, A. W. N. 1907, 287 = 4 A. L. J. 754	43
—Construction of document—Custom or Contract, A. W. N. 1907, 285	43
—Construction of document, A. W. N. 1908, 59 ...	180
—Owner of resumed muafi-holding—Whether a Co-sharer, 4 A. L. J. 685	43
—Sale—Whether includes an exchange—Retransfer to vendor's widow—Cause of action, 4 A. L. J. 756 = A. W. N. 1907, 280 ...	44
—Construction of documents—Muhammadian Law, A. W. N. 1908, 153... ..	399
—Construction—Rights of holders of Khalsa and milk, 15 A. L. J. 414... ..	399
—Sharauk hakiat—Malik—Owner of resumed muafi—Preferred over co-sharers in other Khata, 5 A. L. J. 203 = A. W. N. 1908, P. 142... ..	399
<i>Water</i> —Damages caused by retention of—Liability of owner of land for damage caused by stange of water, 31 Mad. 169.	457
<i>Water Right to</i> —Infringment of water right whether contractual or proprietary when likely to cause damage may be restrained by injunction though no evidence of actual damage is given, 31 Mad. 171... ..	458
<i>Wild animals</i> —Elephant—Animals ferve natuce—Right of property—Animals revertendi—Recapture, 35 Calc. 413... ..	416
<i>Will</i> —Charities—Bequest for charitable purposes, 9 P. L. R. 547 ...	491
—Construction of—Res-judicata—Partition by sons "shall divide my property among my sons in equal shares" if departure as gift—Mother's share how far affected by shares otherwise inherited by	

- her—Estimating mother's share—Stridhan from her husband's estate, credit for—Form of, 12 C. W. N. 1002 ... 481
- Construction of—Res-judicata—Partition by sons "shall divide my properties among my sons in equal shares" if departure, as gift—Mother's share how far affected by shares otherwise inherited by her—Estimating mother's share—Stridhan from her husband's estate, credit for—Form of, 12 C. W. N. 1002 ... 481
- Construction of document "money" General personal estate, A. W. N. 1901, 205 ... 458
- Construction of Rupia "money"—Presumption against partial intestacy, 5 A. L. J. 519 ... 507
- Construction—Meaning of "Bapika Vanshamanthi," 10 Bom. L. R. 97 ... 188
- Uncertainty—Bequest for purposes of popular usefulness or for purposes of charity. 31 Bom. 583 ... 188
- Construction—Life estate and widow's estate—Distinction between sale by limited owner—Sale when set aside—T. P. Act, S. 51, 17 M. L. J. 629 ... 159
- Construction—Substitutional gift, 43 L. J. 417; 125 L. T. 237; 19 8, P. W. R. 159 ... III 18
- Construction of—Legatee must be in existence at the date of the testator's death—Appointed—Daughter, custom relating to Indian Succession Act, S. 100, 31 Mad. 310 ... 530
- Construction of—Technical words to have their legal effect unless intention to contrary apparent on the face of will—The words "in trust" do not always create trust—Merger—Where trust in favour of parts in whom legal estate vested—Equitable estate merges in the legal estate—General disposition of whole estate will not be cut down, unless intention so to cut down is clear—Will must be construed as a whole—The words "as she may require" mean as may be necessary, 31 Mad. 283 ... 552
- Execution, 1907, L. J. 691; 35 T. 45 ... III 2
- Forfeiture—Clause against public policy—Effect of, 1908, W. N. 18... ... III 8
- Mistake—Effect of—Bequest, 124 L. T. 196; 1908 W. N. 210 ... III 8
- Power of appointment—Validity of—Person appointed, qualifications necessary, 11 O. C. 271 ... 581
- Probate—Practice, Landia Gawes v. Anie Pereira (F. A. 181 of 1907) ... IV 9

- Right to set off legacy against future debt, 1908, W. N.
 116; 43 L. J. 301 ... III 14
 —Signature, proof of *Reeves v. Grainger*, 52 S. J. 355 ... IV 8
 —Widow—Joint bequest—Absolute—Estate, 1 Sind L. R. 249 531
Fitness—Right of as to payment of expenses, 14 Bur. L. R. 216 ... 503
Witnesses—Absent on adjourned hearing because not served—Suit
 not to be dismissed, 3 P. W. R. 121 ... 233
Woman—Instrument not explained to—Invalidity of, 24 L.T. 129... III 5
Workman Artificers Act (XIII of 1859) Ss. 2 and 5—Extension of
 the Act under S. 5—Effect—Money advanced, whether recoverable
 when contract expired, 12 C. W. R. 869 ... C
Workman Breach of Contract Act (XIII of 1859)—Residence of mas-
 ter or complainant—Outside Presidency Towns—Expiry of term
 of contract—Enforcing contract—Return of money advanced—
 Punishment of non-return, 8 Cal. L. J. 312 ... CX XIII
 —S. 2—Jurisdiction of Magistrate to order delivery, 3 M. L.
 T. 292 ... LXXII
 —S. 12—Summary trial, 10 Bom. L. R. 1026 ...
Workman's Compensation Act, 1906—125 L. T. 147—43 L. J. 371. III 16
 —1908. W. N. 151; 125 L. T. 148; 43 L. J. 373; 52 S. J.
 581 ... III 16
Zaildari—Claim of a candidate of the prevailing tribe in a Zail—
 Superior right, 3 P. W. R. 3; 9 Punjab L. R. 110 ... 188
-

PART V.

ACTS OF SUPREME COUNCIL.

<i>Act 1 of 1903—(An act further to amend the Legal Practitioners Act 1879)</i>	1
<i>—2 of 1908—An act further to amend the Indian Tariff Act. 1894</i>	2
<i>—3 of 1908—An act further to amend the law relating to Private Trusts and Trustees</i>	3
<i>—4 of 1908—An act further to amend the coroners act 1871, and the Prisoner's Act 1900</i>	5
<i>—5 of 1908—The New C. P. Code (Special Supplement)</i> ...	7
<i>—6 of 1908—An act further to amend the law relating to explosive substances</i>	11
<i>—7 of 1908—An act for the prevention of incitements to murder and to other offences in newspapers</i>	11
<i>—8 of 1908—An act to amend the Local authorities Loan Act 1904</i>	11
<i>—9 of 1908—The Indian Limitation Act 1908 (Special Supplement)</i>	11
<i>—10 of 1908—An Act to make special provision for the payment of duty on salt in certain cases.</i>	11
<i>—12 of 1908—An Act to demand the Assam Labour and Emigration Act 1901</i>	15
<i>—13 of 1908</i>	18
<i>—14 of 1908</i>	

PART VI.

BOMBAY ACTS.

<i>Act 3 of 1907—An Act further to amend the Bombay Vaccination Act...</i>	1
<i>—4 of 1908—An Act to amend the Government occupants (Sind) Act 1890)</i>	9

PART VII.

PRIVY COUNCIL CASES.

<i>Attar Singh v. Thakar Singh, (Punjab)...</i>	88
<i>Fajjnath Gaenka v. Ramdhari Chowdhry, (Bengal)</i>	86
<i>Bajrang Singh v. Manokarnika Bakhsh Singh, (Oudh),</i>	1

The Bank of Bombay v. Suleman Somji, (Bombay)	...	...	68
The Bank of Bombay v. Suleman Somji,...	...	...	96
Raja Phul Kunwar v. Ghansiam Misra,...	...	...	10
Chattrapat Singh Dugar v. Maharaj Bahadur Singh, (Bengal)	...	...	57
Deandra Nath Dutt v. The Administration General of Bengal, (Bengal) ...	...	...	74
Faimba Bibi v. Sheikh Ahmed Bakhsh, (Bengal)	...	...	15
Guru Prasanna Lahiri v. Jotindra Mohun Lahiri, (Bengal)...	...	...	42
Hansraj v. Sundarlal, (Punjab)	...	...	77
Kalka Parshad v. Mathura Parshad, (Oudh)	...	...	101
Mahomed Ali Haidar Khan v. Secretary of State for India in Council, (Bengal) ...	...	...	91
Ma Wun Di v. Ma Kin, (Lower Burma)	...	...	16
Muhammad Naseem v. Mirza Mahoment Abbas Ali Khan, (Oudh)...	...	...	31
Musammatt Surajmani v. Rabi Nath Ozha, (Allahabad)	...	...	22
Musammatt Walihan v. Jogeshwar Narayan, (Bengal)	...	...	20
Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh, (Oudh)	...	...	88
Pestonji Jivaji v. Shapurji Edulji Chinoy, (Hyderabad)	...	...	58
Radha Prasad Mullick v. Raimoni Dass, (Bengal)...	...	...	65
Raja Gokuldas v. Sheth Ghasiram, (Oudh)	...	...	35
Raja Pramda Nath Roy v. Raja Ramani Kanta Roy, (Bengal)	...	...	26
Raja Rai Bhagwat Dayal Singh v. Debi Dayal Sahu, (Bengal)	...	...	51
Sankaralinga Nadan v. Raja Rajeswara Dorai <i>alias</i> Mutturamlinga Dorai (Madras) ...	...	...	79
T. P. Pethermal Chetty v. R. Muniandi Servai, (Burma)	...	...	46
Thakur Jowahir Singh v. Thakur Baldeo Singh, (Oudh)	...	...	41

PART VIII.

GOVERNMENT NOTIFICATION.

Abkari—No. 3125—Duties (1908) Bom. G. G. 426	...	...	15
—No. 2045—The rate of duty leviable on sale (Bom. G. G. 1908, Part 1 )	...	...	11
Adulteration Prevention—Act No. 341—Lonavala (1908 Bom. G. G. 54	...	...	2
Bombay Motor Vehicles—Act No.4490—To amend the Motor Vehicles Rules 1906 (B. G. G. 1908, P. 1368 a. )	...	...	25
Cantonments No. 398—S. 28 of the Cantonment Act XIII Kirkee	...	...	1
—No. 276—Octroi duties—Ahmedabad Cantonment, Bom. G.G. 1908, 36	...	...	1

————(Nagar). No. 5648—Tax, Ahmednagar, (B. G. G. 1908 1430)	25
————No. 3332—The Commissioner of Sind, Part 1, B. G. G. P. 1 418	24
————Code (amendments), Part I, B. G. G. P. I 418... ..	17
<i>Cattle Trespass Act</i> No. 2358—Broach (1908 Bom. G. G. 321) ...	4
<i>Civil Court at Patan</i> —No. 6845 (B. G. G. 2059)	2
<i>Court of Wards</i> No. 2157—Mewasi Chief in the West Khandesh, (Bom. G. G. 1908, P. I P. 288)	9
<i>District Police Act</i> No. 4872—Sind; (B. G. G. P. 1448)	27
<i>Honorary Presidency Magistrates</i> —N. 1653, Quorum, (G. G. (1908) 468)	14
<i>Land Revenue Code</i> —No. 296—Shahada (1908, B. G. G. P. 42) ...	2
————(Commissioner in Sind) No. 9291—Commissioner in Sind, (B. G. G. P. 1446)	27
————No. 479—Table of fees (B. G. G. 1903, P. 1341)... ..	27
————No. 12741—Chapters VIII and IX—Khed Taluka (Bom. G. G. p. 71)	3
————No. 4517 (G. G. 1908, 631)	13
————No. 4602 (B. G. G. 1908 p. 559)	14
<i>Mewasi Chiefs</i> —No. 2156 (Bom. G. G. 1908. p. 288)	9
<i>Nasik Municipality</i> —No. 1921 (B. G. G. 1908, p. 459)	13
<i>Octroi Duties</i> . Ahmedabad Cantonment (1908. Bom. G. G. 54) ...	1
<i>Opium Act</i> —No. 4536 Section 12. The Collector of Customs, Bom. (G. G. 1908. 632)	13
<i>Post Office Act</i> —To Rule 132 (1) (Bom. G. G. 1907. p. 2058) ...	5
<i>Provincial Insolvency Act</i> —No. 79. Town and Cantonment of Karachi, (B. G. G. 2059)	2
<i>Public Conveyances Act</i> —No. 3328 of Dhulia (B. G. G. P. 1 918) ...	24
<i>Record of Rights</i> —No. 2174. Sections. 10 to 12—Yaval Taluka (Bom. G. G. 1908. p. 288)	10
————No. 4468. Ron Taluka (B. G. G. 1908 631)	13
————No. 3009. Junnar (1908) Bom. G. G. 418	15
<i>Sea Customs Act</i> —Mhowra flowers. Portugal (1908 Bom. G. G. 45... ..	2
————Malwa opium. (B. G. G. 1908. P. 1368, A)	27

HIGH COURT RULES.

Counsel—Refresher	31
<i>Holidays in Karwar</i> —No. 478, (Bom. G. G. 1908)	11
<i>Pleaders Examination</i> —No. 40—Rule III, (Bom. G. G. 1908) ...	11
————No. 332, (1 B. G. G. 1908, p. 152)	5

Index.

127

<i>Service of Process by Bailiffs</i> —(B. G. G. 1908. P. 616)	14
———No. 102—The Taxing Officer (1 B. G. G. 1908, p. 152)	5
<i>Tradition</i> —No. 2086, (B. G. G. P. 1453)... ..	27

BOOK REVIEWS.

<i>Bostwick's Lawyers Manual</i> . By Charles F.	11
<i>Batorworth's ten years digest</i> ,	28
<i>Civil Procedure Code</i> , 1908, with notes by Mr. A. Abasi,	
" " " " Mr. N. M. Patwardhan,	
" " " " Mr. Jankinath Pal	30
<i>Companies Act</i> —(England), by D. G.	16
<i>Criminal appeals</i> —(Under Act 6 of 1907), by A. C. Forster Boulton.	16
<i>Diseases of Workmen</i>	16
<i>Duty and Liability of Employers</i> , by Judge Robert and George Wallace	28
<i>Epitome of Law effecting Marine Insurance</i> ,	10
<i>Handbook of the Law of Evidence</i> . Second Edition by John Jay,	
Mekkelney,	15
<i>Index of cases judicially noticed</i> (1907), B. T. S. Subrahmaniam Aiyar,	11
<i>Indian Evidence Act</i> —With the case law thereon, by T. V. Sanjana Rao	8
<i>India Evidence Act</i> by Janki Nath Paul,	16
<i>Insanity in India</i> , by Major J. F. W. Ewans	29
<i>The Institutes of Musalman Law</i> , by Nawal A. F. M.	3
<i>Lala Lajpatrai</i> , his writings and speeches	4
<i>Law and Practice of Divorce</i> , by G. L.	10
<i>Law relating to the Devolution of Real Estate on death and the Ad-</i>	
<i>ministration of Assets</i> , by the late L. G. G. Triestain	6
<i>Law and Practice as to Formation of Companies</i> Nicholas,	6
<i>Lawyer's Companion Part XVIII</i> , by T. V.	8
<i>Law of Arbitration in India</i> , by Durga Charan Bannerji	29
<i>Magistratis Court Manual</i> , by P. C. Chatterji,	12
<i>Law Dictionary</i> —M Izley and Whitelegs—Third Edition By Leor-	
nard H.	15
<i>Medical Jurisprudence for India</i> by Lieut. Col. P. Hebir	15
<i>Practical Guide to the Death duties</i> by Charles Batty	12
<i>Principles and Practice of the law of Libel and Slander</i> by Hugh Fraser	7
<i>Provincial Insolvency Act 3 of 1907</i> By A. P. Muddiman	31
<i>Real Property</i> By Alfred F. Topham	15
<i>Students Guide to Roman Law (Justinian and Goins)</i> by Dalzeel	
Chalmers... ..	7
<i>Workman's Compensation Cases</i> —Vol. 9 by B. M.	15

Supplementary Index for 1908.

Note:—The following Portion of Index from A to G. was omitted by mistake. It is therefore put as Supplement.

Agra Tenancy Act—Sa. 63, 79, 167—L. W. P. Rent Act Sa 36, 46	
—Res-Judicata A. W. N. 1908 32=5 A. L. J. 30	94
—Section 95 Clause (b)—Acceleration that plaintiff as the adopted son of a tenant was entitled to his tenancy—Declaration of tenancy—Jurisdiction—Civil Court, 5 A. L. J. 514	459
—S. 144, 84 (b)—Suit by co-charers against lambardar—Lambardar entitled to 5 P. C. on the revenue S. 159 "other duties"—set off, 4 A. L. J. 781	52
—S. 117—Question of proprietary title—Jurisdiction—Civil and Revenue Courts, 30 All. 188	302
—Sa. 160, 161—Appeal heard ex parte—Application for rehearing—Refusal order if appealable—Applicability of Civil Procedure Code. s. 556, 560 and 588, 12 C. W. R. 881	418
—S. 177—Appeal—Jurisdiction—Question of proprietary title, A. W. N. 1908, 69=5 A. L. J. 128	190
—Sa. 177, 199, 200—Question of proprietary title—Appeal—Civil and Revenue Courts—Jurisdiction, A. W. N. 1907. 271=30 All. 52	243
—S. 197—Which party a tenant—Question of proprietary title, 5 A. L. J. 71	95
—Sa. 193 (8) and 34—Suit for rent—Set off, A. W. N. 1907 269	2
—S. 199—Suit for ejectment in Revenue Court—Admission on part of defendant to plead title himself, 29 All. 601... ..	2
—S. 199 (a)—Limitation—Defendant referred to Civil Court—Limitation Act, article 120, 30 All. 44	244
—S. 201—Evidence Act, S. 4—Evidence—Presumption—Record of plaintiff's name as a co-sharer, A. W. N. 1907, 292=4 A. L. J. 802, 54=33 All. 58	244
—Section 201—Shall presume meaning of—Presumption conclusive, 5 A. L. J. 495	460
Bengal Tenancy Act—Sch. II Art. 110—Co-sharer—Landlords—Separate collection of rent—Suit for entire rent by transferee of	

whole interest of one co-sharer making other co-sharers defendants	
— maintainability, 32 Cal. 744... ..	462
— <i>Sch. III Art. 2 (b)</i> —Limitation of rent suits—Faislee year—	
Rent due on the last day of Bhadra—Period of limitation, 7 C. L.	
J. 106	142
— <i>Ss. 52, 55, 62</i> —Reference to Civil Court—Conditions of "Pos-	
session" meaning of in S. 55—Mahomedan Widow—Dower claim for	
Jurisdiction—Revision by High Court, power of, 35 Cal. 120 ...	247
— <i>Se. 55, 178 (b) 168</i> —Landlord and Tenant—Decree for rent	
—Executive—First charge lien—Regulation VIII of 1819, S. 134	
35 Cal. 737	461
— <i>S. 65, 159, 183</i> —Co sharers—Right of one co-sharer to see	
for the whole rent making defendants his co-sharers who refuse to	
join in the suit as plaintiff's—Right to bring whole tenure to sale—	
Agreement to pay rent to co-sharers separately, effect of, 35 Cal.	
331	248
— <i>S. 69</i> —Application of, 7 C. L. J. 251	249
— <i>Sec. 87</i> —Non-transferable ryotholding—Transfer under lease	
—Forfeiture—Landlord and tenant, 7 Cal. L. J. 78	141
— <i>Sec. 87 Cls. (1) and (2)</i> —Non-transferable occupancy hold-	
ing—Abandonment—Notice by landlord if necessary—Mortgage of	
holding—Sale by mortgagee of constitutes abandonment, 12 C. W.	
N. 899	420
— <i>Sec. 88</i> —Sub-division of holdings—Rights of purchaser—Land-	
lord's title not questioned, 8 C. L. J. 161... ..	461
— <i>Ss. 91, 188</i> —Application for measurement by a landlord who	
is realising his rent separately whether maintainable—Joint owner	
—Joint landlord, 35 Cal. 417... ..	304
— <i>Secs. 103, B. 105, 106, 108</i> —Record of rights—Suit to cor-	
rect or alter countries—Maintainability, 12 C. W. N. 1932 ...	462
— <i>Sec 106</i> —Record of rights—Application to correct entry	
made before—Amending Act of 1898—Reference to Civil Court un-	
der Amending Act—Jurisdiction—Interpretation of statute—Change	
of procedure during pendency of proceeding, 12 C. W. N. 987 ...	462
— <i>Ss. 108, 109, sub-sec. (3)</i> —Record of rights—Settlement of-	
ficar, power of—Revision of entries objection by tenants—Second	
appeal—Settlement of rent, 35 Cal. 76	249
— <i>Ss. 105, 106, 108</i> —Record of rights—Entries as to character	
of holding and status of tenant—Correction of entries—Proper pro-	
cedure, 12 C. W. N. 122	55

—S. 143—Suit for rent—Aggregate rent—Aggregate Area—Single—Suit—Maintainability of suit—Execution of decree, 7 C. L. J. 96.	141
—S. 143, 170—Bengal Tenancy Amendment Act (Bengal Act XIV of 1882) S. 310 A., 35 Cal. 543	421
—S. 153—Landlord and tenant—Munsif with—Special power—Decision of appeal—Suit—Value of suit, 35 Cal. 547 ...	421
—Ss. 159, 193—Father rent, 6 C. L. J. 669	5
—S. 167—Notice—Proof of service of notice—Validity of Order sheet of the proceedings—Entries in evidential value of, 7 C. L. J. 263... ..	249
—Ss. 166, 167—Occupancy holding—Mortgage—Incumbrance annulment of fraud, 11 C. W. N. 114... ..	5
—Sec. 171—Right of Depositor to obtain possession—Procedure—Application or suit, 12 C. W. N. 55	53
—S. 188—Co-sharer landlords—Separate collection—Right of sharer to sue for whole rent making co-sharers—Defendants—“ Required or authorised to do ” under the act—Filing of suit—General principles of legal procedure, 12 C. W. N. 249 7 C. L. J. 139	95
—S. 193—Limitation, 7 C. L. J. 152	96
<i>Bengal N. W. P. and Assam Civil Courts Act (XII of 1887) Ss. 9, 22 (2)—Transfer of appeal to Additional Judge, 8 C. L. J. 34 ...</i>	344
<i>Calcutta Municipal Act (3 B. C. of 1898) Ss. 406, 408, 409, 574—The power of the General Committee to proceed either S. 406 or S. 408—Sub Committee's power to sanction amendment of the original plan—The officer who should inspect a bustee and submit report—The objections of the owners of a bustee to a standard plan how to be made, 12 C. W. N. 116</i>	513
<i>Cantonment Code, Ss. 76, 79 and 96—Cantonment—Committee—Delegation of powers delegated to a Committee of two not exerciseable by surviving members, A. W.N. 1907, 275=4 A.L.J. 694. II</i>	II
<i>C. P. Tenancy Act, S. 44—Want of jurisdiction should be patent, 3 Nag. L. R. 186</i>	112
—S. 92—Suit between landlord and tenant—Jurisdiction of Civil Court, 4 Nag. L. R. 63	251
Civil Procedure Code, S. 2, 103, 556, 558, 584, 588 (27)—Order dismissing suit or appeal for default under sec. 102 or 556 respectively not a ‘ decree ’ and not appealable under section 584, 31 Mar. 157	423

—S. 12—Court of the Political Agent—Muscat, not established by the Governor General of India, Sind L. C. 166	195
—S. 13 (<i>Expl. II</i>)—Res-judicata—First suit decided in a preliminary point—Second suit on a point decided in the first suit, 10 Bom. L. R. 346	307
—Sa. 13 (<i>Ex. II</i>) and 43—Cause of action—Suit for a share in inheritance—Dower—Subsequent claim for, 11 O. C. 69	306
—S. 13—Res-judicata—Mortgage—Redemption suits, 9 P. L. R. 535	464
—S. 13—Res-judicata—Suit dismissed on an alternative ground, 4 M. L. T. 90	464
—S. 13—Res-judicata—Mortgage of Jewmi—Suit by a purchaser of a share for partition—Mortgagees parties—Suit by purchaser for possession—Res-judicata—Limitation Act, Art. 134—Point taken in appeal—Secondary evidence, 4 M. L. T. 73... ..	463
—S. 13—Res-judicata—Decision by Nagpur—No res-judicata in Berar, 4 Nag. L. R. 61	252
—S. 13—Res-judicata—Question of title decided former suit by Revenue Court—Former suit instituted wrongly in Revenue Court—Appeal to the Civil Court—Suit to be deemed as instituted in right Court, 5 A. L. J. 1407... ..	347
—S. 13—Res-judicata—Point decided by Lower Court not decided by Appellate Court, N. L. R. 18	346
—S. 13, <i>Expl. II</i> —Res-judicata—Matter which should have been made a ground of defence in previous suit—Subject-matter if must be identical—Rent suit—Ex-parte decree—Plea of payment not raised—Claim of set off in subsequent rent—Suit, 12 C. W. N. 832... ..	423
—S. 13—Res-judicata—Rent—Suit for—Mesne profit—Suit for, 8 Cal. L. J. 303	515
—S. 13—Res-judicata—Mortgage—Redemption, 3 P. W. R. 475	556
—S. 17—Venue of suit, 3 P. W. R. 309	347
—S. 17—Plea of payment—Debtor to follow his creditor—Principal and agent, 11 O. C. 191	347
—S. 17 <i>Expl. III</i> —Cause of action arises only where money is expressly or impliedly payable under the contract and not under any general of law, 31 Mad. 223=4 M. L. T. 97	461
—Sa. 20, 24—Two suits in two Courts under different High Court—Jurisdiction—Stay of proceedings, 35 Calc. 541... ..	424
—Sa. 22, 248—Practice—Notice—Application of transmission of decree—Execution—Court which should issue notice—Code of	

Civil Procedure, 12 C. W. N. 897.	433
——— <i>Ss. 26, 28</i> —Misjoinder of defendant—Meaning of—Respect of the same matter, 18 M. L. J. 238... ..	348
——— <i>Ss. 26, 28</i> —The word 'same matter' in S. 28 wider than the words 'same cause of action' in S. 26—Suit sustainable against several defendants if in respect of 'same matter' although in respect of 'several cause of action, 31 Mad. 252	465
——— <i>S. 28</i> —'Same matter.' 18 M. L. J. 265	348
——— <i>S. 28</i> —'sjoinder—Guardian and Ward, 3 M. L. T. 286... ..	252
——— <i>S. 28</i> —Trustee made as defendant—Plaint not showing that the other trustee refused—Maintainability of the suit, 4 Mad. L. T. 194	515
——— <i>S. 28</i> —"same matter"—Joinder of defendants, 18 M. L. J. 265	424
——— <i>S. 32</i> —Parties—Limitation—Adding party to suit after period of limitation—Limitation Act, S. 22, 35 Cal. 315	348
——— <i>S. 32</i> —Adding parties—Practice, 3 P. W. R. 200... ..	253
——— <i>S. 34</i> —Non-joinder of parties—Action not taken at the earliest opportunity—Limitation, 1 W. N. 1908, 246	556
——— <i>S. 43</i> —First suit on bond given for salary due—Second suit for subsequent year's unremunerated service—No bar, 18 K. L. R. 32.	372
——— <i>S. 43</i> —Usufructuary mortgage—Suit for redemption—Subsequent suit to recover surplus profits—Limitation Act, article 105—Transfer of Property Act. S. 92, 30 All. 225	465
——— <i>S. 43</i> —Suit to recover possession—Fresh suit to recover mesne profits, 4 M. L. T. 192	515
——— <i>S. 43</i> —Suit for redemption decreed—Second suit for surplus profits recovered by mortgagee during mortgage not maintainable—Effect of article 195 of the Limitation Act, 5 A. L. J. 192	195
——— <i>S. 43</i> —Suit under S. 625, C. P. Code, 4 Nag. L. R. 14	195
——— <i>S. 43, 373</i> —Limitation Act, article 106—Suit for division of alleged partnership assets—Separate suits for property at different places, 30 All. 279	515
——— <i>Ss. 43, 377</i> —First suit for declaration of right and partition—Second suit for partition of joint property—Cause of action identical—First suit withdrawn—Second barred—Limitation Act, art. 106—Suit for partition—A suit for a share in dissolved partnership, 5 All. L. J. 278	254
——— <i>S. 44</i> —Injoinder of causes of action—Possession of property and mesne profit, 9 P. L. R. 313	254
——— <i>S. 45</i> —Misjoinder of action—Suit for partition by co-sharers	

melvaram—Kudivaramdars : parties—Partition suit—Debtors—Parties, 18 M. L. J. 85	196
—S. 50—Bar of limitation—Amendment, 10 Bom. L. R. 346.	307
—S. 51—Signature of plaint, 7 O. L. J. 34	348
—S. 59—High Court, Rule 112—Practice—Inspection of documents not referred into the plaint—Right of defendant to inspect his documents before filing his written statement, 32 Bom. 152	254
—S. 80—Notice—Service of, if proper—Service on the outer door of the office, 8 Cal. L. J. 294	516
—S. 53—Amendment of plaint—Conversion of character of suit—Claim for injunction converted to one for possession, 9 P. L. R. 860	307
—S. 97—Application of, 3 P. W. R. 238	254
—Ss. 102, 103, 157 and 158—Appearance for adjournment—Effect of, 1 Sind L. R. 224	349
—Ss. 102, 558—Dismissal of appeal for default—Pleader engaged in lower court asked to pray for adjournment without Vakilatnama. 18 K. L. R. 27	372
—Ss. 102 and 108—Dismissal for default—Mortgage—Redemption—Suit barred, 9 P. L. R. 552	465
—Ss. 103 and 592—Application for—Leave to appeal as Pauper—Verification of, 11 O. C. 19	262
—Ss. 103 and 647—Dismissal for default—Application for revision—Dismissed for default—Application for re-hearing—Sufficient cause—Absence of counsel owing to unusual combination of circumstances, 9 P. L. R. 85	196
—S. 103—Suit—Default of appearance—No appearance by counsel—Dismissal for default—Sufficient cause for default, 10 Bom. L. R. 904	516
—S. 108—Hearing of application under—During pendency of appeal, 12 C. W. N. 85	4
—S. 108—Written statement filed—Party not appearing on the adjourned of hearing—Whether decree is exparte, 4 M. L. T. 216	55
—S. 108—Setting aside separate decree—Security, 14 Bur. L. R. 214	466
—S. 108—Several defendants—Exparte decree—Application to set aside by one defendant—Decree against all defendants set aside—Legality of the order, 4 M. L. T. 280	516
—Ss. 108, 591—Rule discharged by High Court—District Judge—Power to reopen question—Order setting aside—Exparte decree—Appeal if open to attach in petition to High Court—Facts	

in judgment—Affidavit if necessary, 8 Cal. L. J. 308	...	516
——— <i>S. 108, 157, 158</i> —Make such other order as it thinks fit—		
Pleader appearing for adjournment—Refusal to adjourn—Pleader		
abstaining from the conduct of the case—Whether <i>ex parte</i> , 18		
M. L. J. 51=3 M. L. T. 225	... ..	196
——— <i>S. 111, 544, 583</i> —Set off in restitution—Equitable relief—		
Accounts taking of—He who seeks equity must do equity, 18 M.		
L. J. 39...	... ..	197
——— <i>S. 136</i> —Scope of—Discretion—Defence when to be struck off,		
7. C. L. J. 295	... ..	198
——— <i>S. 156</i> —Failure to pay costs of adjournment—Disposal of		
suit thereon, 4 M. L. T. 200...	... ..	517
——— <i>S. 158</i> —Scope of, 9 P. L. R. 299	... ..	308
——— <i>S. 181</i> —Duty of Court—Examining witnesses, 4 Nag. L. R.		
129	... ..	517
——— <i>Sec. 199</i> —Judgment when the Judge ceased to exercise ju-		
risdiction in the place, if valid, Calc. L. J. 666	... ..	349
——— <i>Sec. 199</i> —Judgment—Judgment written after transfer of the		
Judge from the place where the case was heard, if valid, 35 Calc.		
756	... ..	466
——— <i>Sec. 198, 202</i> —Judgment—Time for its dating and signing		
Parties can compromise both before and after judgment is deliv-		
ered, 3 P. W. R. 240	... ..	255
——— <i>Ss. 202, 623</i> —Clerical errors in a judgment, 3 P. W. R. 196	... ..	308
——— <i>Sec. 204, 551</i> —Effect of dismissal of appeal—Amendment of		
decree—Civil Procedure Code, S. 206, 30 All. 290	... ..	517
——— <i>S. 206</i> —Limitation for application under S. 206—Revision		
where the Lower Court declined to correct a clerical error—Civil		
Procedure Code S. 622, 11 O. C. 208...	... ..	424
——— <i>S. 208</i> —Construction of decree—Specific moveable property		
—Execution against debtor not in possession 3 P. W. R. 225	... ..	255
——— <i>S. 216</i> —Partition suit—Preliminary order for partition—		
Final decree—Appeal—In appeal both can be questioned—Practice		
—Pleadings, 10 Bom. L. R. 514	... ..	308
——— <i>S. 230</i> —Execution of decree—Limitation—Decree for money		
9 P. L. R. 369	... ..	308
——— <i>Sec. 230</i> —Agreement under sec 257 A—Sanction—Limitation		
—Res-judicata—Mistake of law, 4 M. L. T. 233	... ..	518
——— <i>Ss. 232</i> —Decree for possession of immovable property, 30		
All. 28	... ..	255

—Secs. 232, 244, 372 and 617—Decree for an injunction to protect land—Sale of the land—Subsequent suit by the purchaser for an injunction—Execution of the former decree cannot lie, 32 Bom.	
13	309
—Sec. 232 Cl. (b)—Decree directing separate amounts with separate sets of proportionate costs to be recovered against defendants—Transfer of the decree in writing to one of the defendants—Application by the transferee to recover the amount due by the other defendant, 32 Bom. 195	308
—Secs. 232, 649—Execution—Application for where to be made—Transfer of jurisdiction—Court which passed the decree, 12 C. W. N. 849	425
—S. 234—Hindu Law—Decree debt—Sons brought on record as representatives of deceased father—Pending suit—Decree—Form of, 16 M. L. J. 36	198
—Sec. 235—Exemption of giras from sale in execution—Suit as representative of deceased husband—Personal decree—Execution, 18 K. L. R. 39	372
—Sec. 237 and 287—Decree holder putting property to sale without disclosing his lien, effect of—Purchaser without notice—Liability for the undisclosed lien, 11 O. C. 206	425
—S. 244—Question relating to the execution—Discharge or satisfaction of the decree—Contest between the holder of a decree for an undivided share of joint property and an auction purchaser pendente lite, 30 All. 231	466
—S. 244—Mortgagee under the judgment debtor—Whether representative, 4 M. L. T. 85	467
—Sec. 244—Application of, 8 C. L. J. No.	349
—S. 244—Direction by an Appellate Court—Appealable—Reference by the Privy Council, 4 M. L. T. 92	466
—S. 244—Execution of decree—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased, 30 All. 72	257
—S. 244—Purchaser at Court sale—Whether representative at of decree holder, 3 M. L. T. 306	256
—S. 244—Appeal—Order refusing to grant a sale certificate auction—Purchaser—Party—Execution relating to, 7 Cal. L. R. 436	256
—S. 244—Auction purchaser not a representative of decree-holder when the question is the right of such purchaser to possession against judgment-debtor, 31 Mad. 177	426

————— <i>S. 244</i> —Auction purchaser—Representative of the judgment-debtor, 1 Sind L. R. 158,	191
————— <i>S. 244</i> —Applicability of property sold separately in two decrees—Suit between two auction purchasers—Puisne mortgagees—Right to redeem, 1 Sind L. R. 172... ..	143
————— <i>S. 244</i> —Claim for damages by auction purchaser against judgment debtor and others for inquiry done to property purchased after confirmation of sale not a question relating to execution within section 244, 31 Mad. 37	199
<i>S. 244</i> —Representative—Auction purchaser at sale in execution of decree against transferee of occupancy holding—Decree against recorded tenant, 8 Cal. L. J. 327	518
————— <i>S. 244</i> —Representative, who is—Beneficial owner, 7 C. L. J. 299	199
————— <i>Ss. 244, 234</i> —Questions arising in execution—Legal representatives of debtor—Decree-holder—Sons of a deceased Hindu debtor can raise questions of illegality or immorality of their father's debt in execution proceedings—Separate suit—Not permissible—Limitation Act, art. 179—Appeal by some of the defendants—Limitation for default against defendants who have not appealed, 10 Bom. L. R. 939	556
————— <i>Ss. 244, 250</i> —Payment twice over—Suit for recovery of that amount—Maintainable, 5 A. L. J. 475	426
————— <i>Ss. 244, 278, 283</i> —Party claiming attached property in his character as trustee—Appeal—Wakf—Decree—Directing sale of Wakf property, 18 M. L. J. 21	199
————— <i>Ss. 244, 285</i> —Ex-parte decree—Money realised by decree-holders—Decree set aside—Decretal amount reduced—Refund, 5 A. L. J. 527	467
————— <i>Ss. 244, 258</i> —Execution of decree—Uncertified payment of Court—Subsequent execution by decree-holder—Suit to recover sum paid out of Court, A. W. N. 1908. 220	467
————— <i>Ss. 244, 278 to 283</i> —Decree against father (deceased)—Execution against the sons—Objection that property was wakf—Order—Proper—Procedure 3 M. L. T. 325	257
————— <i>Ss. 244 and 285</i> —Execution of Decree—Sale in execution of inferior Court by order of Court of higher grade—Second appeal where decree of lower Court executed by a higher Court, 11 O. C.	256
————— <i>Ss. 244 and 283</i> —Execution of decree—Reversal of decree on appeal—Effect of—Separate suit—Maintainability of, 35 Cal.	

265	257
—S. 244, 278—Execution of decree—Claims to attached property by shebait, 35 Cal. 364	309
—S. 244, 278—When judgment debtor objects as trustee—Claim falls within S. 278 and the order on such claim is not appealable—Decree directing sale of Wakf property—Valid, 31 Mad. 125	309
—S. 246—Execution of decree—Attachment—Right to attach profits not yet due, 30 All. 246	468
—S. 257 A—Rent decree—Instalment executed by some of judgment-debtors in decree-holder's favour in respect of decretal amount—Enforcement by suit—Agreement to give time, 12 C. W. N. 674	310
—S. 257 a—Agreement of Court to pay rent—Decree by instalments on hypothecation of property if illegal—Suit to enforce such agreement, if maintainable, 35 Cal. 870	557
—S. 257 a—Mortgage in satisfaction of a judgment-debt, 3 P. W. R. 534	557
—S. 258—Manager of a joint Hindu family certifying payment of a decree in favour of himself and minor members—Security power to demand from manager, 11 O. C. 246	467
—S. 258—Transfer of Property Act Sa. 88 and 89—Civil Procedure Code—Execution of decree—Alleged payment out of Court not certified, A. W. N. 1908, 103	310
—S. 258—Payment out of Court—Recognition by Court without certifying, 5 All. L. J. 272	
—S. 258—Adjustment in part of decree—Necessary to be certified, 4 M. L. T. 229	518
—S. 258, 244—Satisfaction of decree-holder's fraud—Application after time to have certified, 12 C. W. N. 485	200
—S. 266—Execution of decree—Attachment—Mortgage—Right of mortgagor in respect of money promised but not paid, 30 All. 252	468
—S. 266—Execution of decree—Attachment—Mortgage—Right of mortgagor in respect of mortgage money promised but not paid, A. W. N. 1908, 105	310
—S. 266—Mortgagees not advancing the whole amount—Balance whether a debt attachment—Sit by purchaser—Cause of action, 5 A. L. J. 49	426
—S. 266—Right to get profit in future years—Attachment,	

5 A. L. J. 10	...	...	...	...	...	426
—S. 266—Arrears of rent—Suit by auction purchaser,	5 A.					
L. J. 265...	...	...	...	...	...	257
—S. 266—Right to get profits in future years—Attachment,						
5 A L. J. 251	...	...	...	...	...	258
—Sa. 274 and 311—Sale—Proclamation—Service if should						
be in every part of the property—Value statement of, if material						
—“Property.” 12 C. W. N. 757	...	...	...	...	...	350
—S. 276—Attachment of judgment-debtor’s property—Trans-						
fer of Property by the judgment-debtor to the plaintiff—Subse-						
quent transfer of same property to plaintiff by the judgment credi-						
tor—Release of the latter rights by the plaintiff—Title—Estoppel						
3 M. L. T. 295	...	...	...	...	...	258
—S. 276—Alienation before attachment order served—						
Validity of, 1 Sind L. R. 176	...	...	...	...	...	200
—Ss. 278 and 283—Objection dismissed for default, effect of,						
11 O. C. 180	...	...	...	...	...	311
—S. 281—Order, under—Binding on whom, 18 M. L. J. 26.						200
—S. 282—Application of—Where in execution of a mortgage						
decree—Land has been attached. 11 Bur. L. R. 20	...	...	...	...	...	468
—S. 283—Suit for declaration of title by person whose ob-						
jections to execution have been disallowed—Burden of proof, 30						
All. 321	...	...	...	...	...	518
—S. 283—Insolvent—Judgment-debtor—Attaching of crops						
by decree-holder—Claim to the crops allowed—Regular suit by						
decree-holder—Question whether decree holder can sue, 4 M. L.						
T. 197	...	...	...	...	...	519
—S. 283—Suit under official assignee of insolvent judgment						
debtor not a necessary party to such suit—Decree in such suit						
cannot declare property—Liable to be attached but only that it						
is the property of the judgment-debtor, 31 Mad. 347	...	...	...	...	...	557
—Sa. 287 cl. (c)—Execution sale—Sale—Proclamation—State-						
ment of value—Enquiry as to approximate value when to be made						
12 C. W. N. 543	...	...	...	...	...	258
—S. 294—Decree—Execution—Auction sale—Decree-holder						
binding for property with permission of Court—Right to set off,						
10 Bom. L. R. 296	...	...	...	...	...	200
—S. 294—Execution of decree—Decree holder bidding for						
property with permission—Right to set aside amount due to decree						
holder against purchase money, 32 Bom. 379	...	...	...	...	...	519

—S. 295—Order under revision, 9 P. L. R. 363...	311
—Ss. 295, 274—Property sold not attached, 3 P. W. R. 534.	558
—Ss. 306, 293—Execution of decree—Sale in execution— Non-payment by purchaser of deposit required by law—Fresh sale—Claim by auction purchaser for difference of price on resale, 30 All. 273	519
—Ss. 310 a, 244 and 588—Question relating to the execu- tion—Discharge of satisfaction of a decree—Appeal—Auction purchaser—Representative of judgment-debtor not of decree-hold- er, A. W. N. 1908, 157	350
—S. 310 a—Decree attached by two persons—Sale by one attaching one creditor—Deposit to set aside sale—Title to deposit 12 C. W. N. 800	250
—S. 310 a—Beneficial owner if entitled to apply—Person whose property has been sold, 8 Cal. L. J. 305	520
—S. 310 A—Application to set aside rent sale—Bengal Tenancy Amendment Act of 1907, S. 54—Right accrued previous to, but application after repeal, 12 C. W. N. 434	220
—Ss. 310 a, 311, 320—Government rule 17 (XII)—Person whose immoveable property has been sold—One co-sharer right to apply—Deposit by one co-sharer—Pending an application to set aside the sale, 5 All. 253	259
—Ss. 310 a, 244, 588—Question relating to the execution— Discharge or satisfaction of a decree—Appeal—Auction purchaser representative of judgment-debtor, not of decree-holder, 30 All. 379	558
—S. 318—Limitation Act Art. 178—Execution of decree— Limitation—Terminus a quo, A. W. N. 1908, 162	351
—Secs 311, 312 and 244 (c)—Execution of decree—Absence of notice to the judgment-debtor—Proclamation of sale—Sale at an under value—Application to set aside sale—Dismissal—Appeal against order of dismissal, 10 Bom. L. R. 752	469
—Sec. 311—Holding sale 3 hours before the appointed hour—Effect of, 14 Bur. L. R. 6	311
—Sec. 313—Jurisdiction—Leave to withdraw suit with liber- ty to bring fresh suit—Letters Patent 1885, cl. 12—Limitation— Limitation Act, s. 14, 35 Cal. 924...	558
—Sec. 318—Article 773—Execution of decree—Limitation— Terminus a quo, 30 All. 390...	559
—Sec. 331—Execution order directing the plaintiff to take	

steps under sec. 331 Civil Procedure Code—Whether proper disposal, 3 Mad. L. T. 295	259
—S. 335—Decree—Execution—Resistance to possession—Obstruction by manager of a joint Hindu family—Minor co-parceners not bound by manager's act after partition, 10 Bom. L. R. 550	311
—Ss. 351, 352—Insolvency proceedings—Schedule not framed—Suit by creditor not barred, 9 P. L. R. 250	201
—S. 362—Parties—Death of sole appellant—All representatives not brought upon the record—Abatement of appeal, 30 All. 187	259
—S. 365—Death of sole plaintiff—Claim of one of the defendants to continue the suit as plaintiff—Abatement of suit, 30 All. 49	260
—Ss. 367, 558 (18)—Dispute as to who is the legal representative of a deceased appellant—Appeal, 30 All. 348	559
—Ss. 367, 588 (18)—Dispute as to who is the legal representative of a deceased appellant, A. W. N. 1908, 139	312
—S. 368—Death of defendant—Time for going his representatives—Dismissal of suit—Whether appeal, 3 M. L. T. 327	260
—Ss. 368 and 582—Right of plaintiffs—Respondents joint or several—No finding by the first Court—Procedure to be adopted—Permissive and not obligatory, 1 Sind L. R. 146	260
—Ss. 372, 234—Money claim—Transfer pending suit—Transferee not made a party to the decree—Whether transferee in legal representative, 4 M. L. T. 190	520
—S. 373, 374—Limitation—Suit—Ultra vires—Fresh suit—Limitation Act, sec. 14, 12 C. W. N. 921	470
—S. 373—Withdrawal of suit—Withdrawal in appeal—Change in substantive law during progress of a suit—Law applicable to the suit—Dekhan Agriculturist's Relief Act, secs. 12, 13, 10 Bom. L. R. 625	426
—S. 373—Withdrawal of suit—Liability to file fresh suit—Permission of the Court—Costs, 10 Bom. L. R. 293	201
—S. 374—Matters outside the scope of suit, 12 C. W. N. 850	427
—S. 380, para 2—Security for costs—Minor plaintiff—Practice, 18 M. L. T. 155	261
—S. 380—Security for costs from a woman—Suit for money includes a suit which results in a decree for money—Appeal lies against the order of a Judge sitting on the original side direc-	

Index.

141

ting security from a woman—Letters Patent, cl. 15, 10 Bom. L. R. 357	261
—Sa. 389, 390—Commission—Evidence—Evidence taken on commission on behalf of the defendant—Right of the plaintiff to sue to such evidence—Practice, 35 Cal. 28	261
—Sa. 380, 410—Pauper—Suit by security for costs, 7 C. L. J. 312	201
—S. 395—Hindu Law—Partition—Preliminary decree—Fresh suit for partition, 3 M. L. T. 328	262
—S. 396—Final decree—No application necessary—A court competent to act—Suo motu—Partition by metes and bounds—Lands not paying revenue to Government, 18 M. L. J. 23 ...	202
—Sa. 407 and 409—Application for—Leave to sue as Pauper—When good prima facie title to property in suit not established, 11 O. C. 67	312
—Sa. 407, 409—Suit informā pauperies—Evidence taken and question of limitation considered—Dismissal of suit—Jurisdiction, 4 M. L. T. 302	559
—S. 424—Notice under—Suit against public officers, 12 C. W. N. 1066	520
—Sa. 440, 443—Representative of minor plaintiff—Leave to Court—Certificated guardian not appointed compromise—Court to decide if for benefit of minors, 8 C. L. J. 31	351
—S. 461—Joint mitakshara family—Minor, next friend—Minor's money in Court—Managing member of mitakshara family—Withdrawal of money from court, 35 Calc. 561	427
—S. 461—Object—Withdrawal of money deposited—Application for joint Hindu family—Mitakshara school—Managing member—Rights of joint brothers—Surety bond, 8 C. L. J. 256... ..	520
—S. 462—Procedure in sanctioning compromise, 8 Cal. L. J. 366	521
—S. 462—Express leave—Duty of Court, 8 Cal. L. J. 274... ..	521
—S. 491—Attachment before judgment of immoveable property by Small Cause Court—Claim for compensation for improper attachment—Small Cause Court, 9 P. L. R. 80	202
—Secs. 492, 493, 522—Injunction—Trespass to property—Defendant in possession and plaintiff out of possession—Jurisdiction—Revision, sec. 493, C. P. C, 18 M. L. T. 91=18 M. L. J. 302... ..	470
—S. 494—Order for injunction without notice to opposite party—Legality of, 11 O. C. 151	912

— S. 503, 508, cl. (24)—Receivers' accounts—Orders in passing appeal, 12 C. W. N. 648	312
— S. 503—Receiver—Appointment of receiver to realize amounts of decrees under attachment, A. W. N. 1908, 164	352
— Ss. 503 (6). 588 (24)—Receiver—Receiver's accounts—Directions as to, if appealable, 35 Cal. 568	427
— Ss. 503—Receiver appointed by the High Court—Direction by the Subordinate Judge to furnish accounts—Jurisdiction, 4 M. L. T. 268...	559
— S. 503—Receiver—Appointment of Receiver to realise amount of decrees, 30 All. 393	559
— Ss. 503, 539—Suit for scheme of management of temple—Whether temple property subject of suit, 4 M. L. T. 88	470
— Ss. 503, 505, 508—Receiver—Appointment of—Recommendation by Subordinate Judge to District Judge—Refusal by the latter to appoint—Appeal, 10 Bom. L. R. 1037	560
— S. 506—Arbitration—Reference made orally, but reduced to writing by the Court—Irregularity, 30 All. 32	202
— S. 508—Arbitration—Order of reference not fixing a period within which the award is to be made—Appeal, 30 All. 169	352
— S. 508—Arbitration—Award—Award set aside—Court not empowered to make a second reference on the same submission, A. W. N. 1908, 228	471
— S. 508—Hundi—Defendant agriculturist—Suit under Chapter XXIX, Civil Procedure Code—Applicability of, 1 Sind L.R. 243	561
— S. 510—Arbitration—Refusal of umpire to act—Power of appoint a fresh umpire. A. W. N. 1907, 159...	552
— Ss. 520 and 522—Award—Remitted by Court for revision—Decree in accordance with revised award—Whether appealable. 4 M. L. T. 328	560
— S. 520—All matters in difference in the suit—Arbitrations jurisdiction—Making out a new contract for parties, 1 Sind L. R. 210	202
— S. 521—Arbitration—Misconduct of arbitrator—Hearing of case, ex parte. 9 Pun. L. R. 520	352
— S. 521—Order setting aside—Award under S. 521 can be questioned on appeal against the final decree, 31 Mad. 345	560
— Ss. 521, 521—Arbitration—Award—Award set aside upon ground not contemplated by S. 521—Appeal, A. W. N. 1908, 242	560
— S. 522—Award set aside appeal—Appellate Court's power	

- to go into the question of the propriety of the order of the first Court setting aside the award, 18 M. L. J. 228 ... 352
- S. 522—Appeal—Arbitration—Finality of decree passed in accordance with award—Disposal of objections to the validity of award by 1st Court—Appeal to the Privy Council against the decree of Governor General's agent in Bhopal—Native State—Special leave to appeal, 3 P. W. R. 337—85 Cal. 646... 428
- Ss. 522, 526—Private arbitration—Award made a rule of Court—Appeal, 30 All 151 ... 312
- Ss. 525, 462—Minor represented by duly appointed guardian—Sanction when necessary—Mahomedan Female—Guardian of minor—Power—Pleadings—Fraud, 1 Sind L. R. 160 ... 203
- Ss. 525, 526—Award destroyed after presentation in Court—Parties referred to regular suit—Legality of, 1 Sind L. R. 167 ... 203
- S. 539—Suit by Advocate General at instance of relators Dismissed—No appeal by Advocate General—Appeal by relators—Maintainability, 32 Bom. 155 ... 263
- S. 539—Permissive not mandatory—Pre-existing right of suit not taken away—Questions relating to jurisdiction—Waiver, 1 Sind L. R. 155 ... 203
- S. 539—Right of villagers to remove Mahant of a religious institution, 9 P. L. R. 21 ... 204
- S. 545—Transfer of Property Act, Ss. 58, 59—Security bond given under S. 545, Civil Procedure Code—Mortgaging immoveable property of above Rs. 100 in value requires registration under Ss. 58, 59 of the Transfer of Property Act—Registration Act, S. 17—Exception (i) does not apply to the case, 31 Mad. 330... 561
- S. 549—Security for costs—Non-compliance with order for security—Appeal rejected—Application to restore appeal—Application refused, 30 All. 143... 313
- S. 549—Appeal—Order rejecting—Application for rehearing of appeal dismissed under S. 549, 3 M. L. T. 222 ... 204
- S. 557—Appeal when to be dismissed for default—Talaq not paid within the time ordered, 35 Cal. 535 ... 428
- Ss. 551, 574—Provisions of S. 574—Not applicable to appeals dismissed under S. 551, 5 A. L. J. 331 ... 313
- S. 561—Supporting decree of lower Court on a point decided against a party, 13th Bur. L. R. 374 ... 204
- Ss. 561 and 577—Prayer for possession or return of purchase money—Decree for possession—Appeal—No memo of ob-

jections—Order for return of money by Appellate Court—Legality thereof 4 M. L. T. 266	562
———S. 562—Remand—Appeal from order of—Remand after decision of the suit in accordance therewith, 30 All. 191 ...	352
———Ss. 562, 588—Appeal—Extent of High Court's power to interfere, 3 Pun. W. R. 312	353
———S. 562—Remand—Preliminary point—Decision on some of the issues involved in the case, 9 P. L. R. 293	213
———S. 562—Remand—Preliminary point—Dismissal of suit on the ground that plaintiff has no locus standi to maintain the suit—Custom alienation by male proprietor in the presence of adopted son who is minor—Suit by next reversioner, 9 P. L. R. 525 ...	471
———S. 562—Remand—Appeal from order of remand after decision of the suit in accordance therewith, A. W. N. 1908, 76 ...	313
———S. 562—Powers of Commissioner, C. P. Code, Ss. 397, 398 Remand—Genuineness of books, Gokaldas v. Balabhai, (Appeal No. 11 of 1908 from order... ..	IV 12
———S. 562—Remand—Preliminary point—What is—Liability for compensation—Amount of damages, 8 C. L. J. 159... ..	428
———Ss. 562, 588 (28)—Remand—Appeal from order of remand filed after decision of suit in accordance therewith, A.W.N.1908, 125=5 A. L. J. 447	428
———Ss. 562, 108—Rehearing—Remand of case—Trial on merits, 7 C. L. J. 379	263
———Ss. 566, 588—Remand—Appeal against order of—Powers of Chief Court, 9 P. L. R. 580	562
———Ss. 562 and 565—Remand—Privy Council—Appeal to, 9 P. L. R. 89	204
———S. 568—Additional evidence on appeal—Jurisdiction, M. L. T. 308	263
———S. 568—Fresh evidence admissible, when inherent defect apparent on examining the evidence—Document purporting to be executed by two persons but signed by only one is not invalid. 31 Mad. 114	313
———S. 568—Powers of Appellate Court to take further evidence, 18 Bur. L. R. 385	205
———S. 574—Issues—Court should raise proper issues—Practice, 10 Bom. L. R. 492	314
———S. 574—Judgment if proper—No reasons, 14 Bur. L. R. 156	429
———S. 574—Judgment not in accordance with the section—Appeal—Practice—Procedure, 18 M. L. T. 34,, ...	205

- See*, 574 and 551—Procedure—Appeal summarily dismissed
 —Court not bound to record a full judgment, 30 All. 319 ... 521
- S.* 575—Whether the third Judge is confined to the point
 referred or whole case is opened, 14 Bur. L. R. 51 ... 314
- S.* 575—Two Judges hearing an appeal and differing in
 their opinions—Whether appeal should be dismissed, 14 Bur. L.
 R. 257 ... 522
- S.* 578—Procedure—Irregularity—Disposal of a suit on a
 Sunday, 30 All. 136 ... 314
- S.* 578—Irregularity—Causes of action—Misjoinder of same
 tortious Act—Separate damages, 1 Sind L. R. 181 ... 205
- S.* 583—Decree for restitution of property silent as to mes-
 ne-profits—Mesne-profits—Ascertainment of, in execution depart-
 ment—Orders of His Majesty in Council—Powers of Court,
 11 O. C. 235 ... 471
- S.* 583—Restitution—Right to apply not confined to par-
 ties to appeal—Rights accruing during litigation, 12 O. W. N. 642. 314.
- S.* 584—Second appeal—Finding of fact based upon an in-
 correct view of the law—Joint Hindu Family—Separate transac-
 tion by individual members—Entries of separate possession in vil-
 lage records, effect of, 11 O. C. 264 ... 471
- S.* 584—Second appeal—Cu om—Question of law—Insuffi-
 cient or illegal evidence, 5 A. L. J. 456 ... 429
- Ss.* 584, 623, 629—When review granted, no appeal lies
 against final decree on grounds other than those mentioned in *S.*
 629—Sufficiency of the reason on which review granted no ground
 for appeal against the final decree, 31 Mad. 49... 264
- S.* 586—Provincial Small Cause Courts Act, Sch 1, Art. 31—
 Suit of Small Cause Court—Nature—Second appeal—High Court,
 10 B. L. R. 733 ... 472
- S.* 586—Small Causes suit—Character of the suit—Second
 appeal—Framing issues—Exact words of the Legislature relating to
 issues—Contract Act, s. 231—Agent undisclosed principal—"Dis-
 closes himself"—Strict construction, 32 Bom. 356 ... 429
- S.* 588 *cl.* 18—Order rejecting an application for substitution
 —Appeal, 5 All. L. J. 363 ... 353
- Ss.* 588 (470)—Decree—Orders—Appeal—Interpleader (suit)
 30 All. 22 ... 262
- Ss.* 588, 2, 103, 556, 588, 584—Appeal dismissed for default—
 Application to restore—Direction of Judge—Order dismissing whe-
 ther a decree—Whether applicab u der sec. 588, 31 M. L. T.386 264

- *S. 595*—Application for leave to appeal to be—Privy Council
—Limitation—High Court's refusal to admit appeal after period of
Limitation—"Decree"—Final decree passed on capital—Meaning
of, 32 Bom. 108 264
- *S. 595*—Remand—Order—Decision of issue governing the
case—Leave to appeal to Privy Council, 6 C. L. J. 168... .. 472
- *S. 595*—Final order—Preliminary point—Res judicata—"Evi-
dence of essential facts"—Civil Procedure Code, s. 562, 11 O. C.
169 314
- *Sec. 595*—Appeal to Privy Council—Leave to appeal—
—Final decree—Bengal Tenancy Act, (VIII of 1855), sec. 187—
Remand order when can be regarded a final decree, 35 Cal. 18 ... 430
- *S. 545*—"Final decree" Order of remand—Suit to annual
incumbrances—Bengal Tenancy Act. S. 167—Notice—Dismissal of
suit on the ground of nonservice of notice, Appellate Court holding
services proved and remanding case, 12 C. W. N. 545 264
- *S. 596*—Appeal to Privy Council—Substantial question of
Law—Opportunity to examine witnesses not given, 3 P. W. R. ... 265
- *S. 622*—Other remedies available—Interference by the Court
in revision, 1 Sind L. R. 266 353
- *S. 622*—Erroneous decision on a question of law Revision, 8
Mad. L. J. 249 353
- *S. 622, 312, 310 and 538*—No revision where an appeal lies,
4 M. L. T. 96 473
- *S. 622*—Revision when allowed, (11 O. C. 238)... .. 472
- *S. 622*—Commission issued by the lower Court for examina-
tion of persons not exempt by the Court—Want of jurisdiction, 3
M. L. T. 246 265
- *S. 622*—Execution—Application—Civil Procedure Code, S. 311
—Practice—Procedure, M. L. T. 249 266
- *S. 622*—Wrong decision on a question of law—High Court's
power to interfere under the Section, 3 M. L. T. 262 265
- *S. 622*—Powers of revision—Wider of jurisdiction—Power
of District Judge—Jurisdiction to grant heirship certificate, 17 K.
L. R. 276 164
- *S. 622*—Revision—No distinct finding on issue. Govind v.
Apa, 1 C. Revapp 54 of 1908) IV 11
- *S. 622*—Revision without making an application to full Bench
—Presidency Small Cause Courts Act Sec. 38, 4 M. L. T. 325 ... 562
- *S. 629, 624*—Review on the ground of ... 62—C. P. Code
not complied with, 8 Cal. L. J. 294 522

———S. 652—High Court Rules 17, 18 and 25—Limitation Act Sec. 12 Presentation of memoranda of appeals—Application and appeals in execution proceedings—Accompaniments entraneous, 32 Bom. 14	205
———S. 317—Nobar to suit against assignee from certified purchaser Sec. 317 O. P. C., 18 Mad. L. J. 205	469
———S. 623—Ground for review, 4 M. L. T. 86	473
———S. 623—New and important matter—Decree—Rendered ineffectual by subsequent decree—Remedy of judgment creditor, 1 Sind. L. R. 227	354
———S. 623—Review—Inaccurate expression in judgment, 5 A. L. J. 405	354
<i>Companies Act</i> , (VI of 1832) Sec. 123 Cl. (e)—Petition to wind up. ‘other reason of a like nature.’, 32 Bom. 415	562
———S. 149—Operation of—Winding up order of the Courts—Effect of, 3 M. L. T. 247	269
<i>Contest of Court</i> —Language which strikes at the root of all respect for the Court and its authority amount to contempt—Criticism of Judge or Court how for justifiable, 10 Bom. L. R. 110	533
<i>Contract</i> —Cross—Contacts—Readiness and willingness to give and take delivery—Breach, 1 Sind. L. R. 248	563
<i>Contract Act</i> , S. 11—Joint Hindu family—Mortgage executed in name of minor—Civil Procedure Code—Section 562 ‘Preliminary Point.’ 30 All. 66	266
———S. 12—Lunatic—Relief—Specific R. Act, S., 38, 41, 10 Bom. L. R. 1004	563
———S. 16—Undue influence—Urgent need of money—Loan Borrowed by a person in urgent need of money—Promise to pay a time barred debt—Unfair and unconscionable bargains—Fraud—Coercion Equity, 32 Bom. 37	206
———S. 16—Undue influence—Relation between parties which placed one in subordinate position essential, (11 O. C. 295)	563
———S. 23—Contract to marry to a father in consideration of his giving his daughter in marriage—Whether immoral or opposed to public policy, (14 M. L. T.)	431
———S. 24—Criminal Procedure Code—Sec. 513—Criminal Prosecution— Bail for appearance—Nominal sale deed and rent—Note passed to indemnify fail—Suit for recovery of rent—Sale deed void as opposed to public policy—Rent note and sale—Deed part and parcel of same transaction—Rent—Note void, 32 Bom. 449 = Bom. L. R. 553.	355, 564

—Sec. 25—Limitation Act section 19 Acknowledgment—Promise to pay a time-barred debt, 30 All. 268	524
—Section 25—Agreement to pay a barred debt—Express contract—Consideration valid, 5 All. L. J. 274	266
—S. 54—Hundi—Consideration proved different from consideration stated in the Hundi—Maintainability on Hundi, 13 M. L. T. 405)	431
S. 56—Contract—Impossibility of performance Rescission of agreement inferred from conduct of parties, A. W. N. 1908, 5	64
—Ss. 62 and 63—Substituted agreement—Effect of award—Obtained subsequently on original agreement—Objections disallowed—Revisional Powers of High Court, 1 Sind L. R. 109	268
—S. 69—Money paid by purchaser to wards an incumbrance—Subject to which he buys, not recoverable under—Resjudicata—Erroneous decision on a question of law how far a bar in subsequent suit. 30 Mad. 161	16
—S. 69—Voluntary payment—Civil Procedure Code S. 310 A—Property of third person sold in execution—His remedy Right to recover money erroneously deposited under S. 310 A. 12 C. W. N. 151	106
—S. 69 and 70—"Person interested in the payment of money—Volunteer—Civil Procedure Code—Section 283, 30 All. 167	355
—S. 69, 70—Money paid for income tax by the person assessed and on whom demand is made cannot under these sections be recovered from a person who is alleged to be the party really liable to pay, 31 Mad. 35	208
—Ss. 69, 70—Fictitious assignee of judgment-debtor—Right to make payment, 5 A. L. J. 163	208
—Ss. 69, 70—"Person interested in the payment of money"—Volunteer—Civil Procedure Code, s. 283, A. W. N. 1908, 58	152
—S. 73—Vendor and purchaser—Contract to sell immoveable property—Damages for such contract, 32 Bom. 165	316
—S. 74—Bond given for the performance of public duty but not under the provisions of any law not within exception to s. 74 of Contract Act—Right of suit—Civil suit maintainable in respect of act amounting to Criminal offence—Limitation Act, schd, II, Arts. 6, 115—Local Board's Act (Madras), ss. 162 c., and 162 d., do not bar civil suit on contract, 31 Mad. 53	268
—S. 107—Damages—Goods unascertained—Amendment of plaint, 1 Sind L. R. 81	152
—S. 108—Stolen property—Sale in owners market—Title—	

Bona fide sale, 9 P. L. R. 425	...	...	...	...	566
—S. 178—Pawnor and pawnee—Pawnor not owner but having a right to possession—Suit by owner for declaration of his title, A. W. N. 1908, 57 = 30 All. 665	...	...	...	...	152, 356
—S. 196—Ratification receiving of, 12 C. W. N. 393	...	...	...	...	152
—S. 231—Agent—Undisclosed principal—"Discloses himself"	...	...	...	...	...
Strict construction,...	...	...	...	...	431
—S. 245—Liability of retiring partner, 9 Pun. L. R. 1908	...	...	...	...	356
—S. 264—Notice—Dissolution of partnership—Sub-partnership and Shikmi Sarik or dormant partner defined—Liability of Shikmi charik, 3 P. W. R. 410	...	...	...	...	431
Court of Wards—Regulation collector—Claim made within time—Decree Collector—Reference to the Decree Collector after claim became barred—Rule framed under the Act—Enforceability of the claim—Limitation Act, sec. 4 and 14, 4 M. L. T. 321	...	...	...	...	564
Court fee—Relief granted which was not asked for by the plaintiffs—Appeal—Court-fee, 30 All. 103	...	...	...	...	298
—Court Fees Act, Sec. 7 sub Sec. V cls (a) and (d)—Revenue paying estate—Suit for possession of share in Court fee on plaint—"Definite share" if must also be separately assessed with revenue, 12 C. W. N. 990	...	...	...	...	474
—S. 7—(ix) Sch 1—Court fee Decree for redemption of mortgage—Appeal on the main ground that nothing was due under the mortgage A. W. N. 1908, 247 = 5 A. L. J. 531...	...	...	...	...	474, 564
—S. 9, 10, 11 and 28—Court fee—Plaint—Court fee on plaint discovered during progress of suit to be insufficient, 29 All. 749	...	...	...	...	108
—S. 17—Alternative reliefs for distinct causes of action—Fees payable on, 11 O. C. 173	...	...	...	...	318
Criminal P. Code, ss. 4 (h), 196, 200—Sedition—Government authority for prosecution—Sufficiency of authority—Complaint—Regularity of proceedings—Presumption of regularity—Official acts—Evidence Act, (1 of 1872), s. 114—Re-publication of seditious articles—Penal Code, (Act XLV of 1860); sec. 124A 499—Exception (4)—Printer liability of Act XXV of 1887, s. 7, 35 Calc. 141	...	...	...	...	IXII
—96, 537—Defective warrant not cured, 12 C. W. N. 1075	...	...	...	...	OIX
—S. 106—Security to keep the peace—Unlawful assembly—Penal Code. S. 143, 35 Calc. 315	...	...	...	...	LVIII
—S. 107 (3) and (4) 114—District Magistrate ordering detention under 107 (4) person not sent before him under S. 137 (8)—Jurisdiction, 3 M. L. T. 311,	...	...	...	...	LIX

- S. 107, 36—Magistrate to whom person is not sent under S. 107 (3) cannot exercise the power of committing to custody under Sec. 107 (4). Section 36 does not confer such power. ... CIX
- S. 107, 108—Security to keep the Peace—Joint inquiry against several persons—Necessity of specific findings against each, 35 Cal. 929 ... CIX
- S. 108—Penal Code Sec. 500—Defamation—Termination of prosecution on death of complainant, 9 P. L. R. 353... LXXVIII
- S. 110, 111, 117, 197, 256—Security for good behaviour—Order embodying substance of information—Transfer—Refusal to—recall prosecution witnesses for cross-examination—Limitation of time for examination of defence witnesses—Restriction of counsel's address—Right to cross-examine witnesses called by the Court—Evidence of general repute association with bad characters, 35 Cal. 243 ... LIX
- S. 110 and 526—Security for good behaviour—Transfer, 30 All. 47 ... XLVI
- S. 117 (4) Parties in conflict with one another cannot be dealt with in one inquiry—Such joinder illegal, 31 Mad 276 ... CI
- S. 117, 556—Appeal heard by the District Magistrate who directed the prosecution—Waiver by accused—Legality of—Transfer of case under chapter VIII outside local jurisdiction, 1 Sind L. R. 98 CX
- S. 118—Order absolute at variance with the conditional order, legality of—Inquiry about sureties—Police report—Procedure on, (11 O. C. 267) ... CII
- S. 118—Surety—Fitness of—Inability to control person bound down, 35 Cal. 400 ... LXXIV
- S. 118, 129, 350—Security proceedings, preventive Sections order on evidence recorded by predecessor—Security for more than one year—submission of proceedings to Sessions Judge—Order of Sessions Judge—Period of imprisonment in default of security, 4 L. B. R. 185=7 Crim. L. J. 412 ... LXXV
- S. 122—Security for good behaviour "unfit"—Discretion of magistrates, 8 C. L. J. 243 ... CX
- S. 123—Security for good behaviour—Term exceeding one year—Reference to Sessions Judge—Sessions Judge's power to go into the merits and to consider the sufficiency of the security, 12 C. W. N. 463 ... XLVI
- S. 123 (and 2) 397—Detention in custody—Failing to give security—Nature of imprisonment—Second sentence—How to be carried into effect, 5 A. L. J. R. 318=1903. A. W. N. 133 LXXIV

- S. 125, 107, 439—Security to keep peace, Extent of District Magistrates' power to cancel security bond, 3 P. W. R. 25 ...LVIII
- S. 133—Procedure—Obstruction to public way, A. W. N. 1908, 151 ...L V
- S. 133—Application for jury—Verdict—Binding, (5 A. L. J. 488) ...XCIII
- Criminal P. Code**—S. 133, 137—Bona fide claim—Dispute to be settled by Civil Courts—Magistrate—Jurisdiction, 10 Bom. L. R. 563LXXXVI
- S. 133, 136, 140—Where order under S. 133 not complied with—Prosecution sustainable under s. 136. without notice under a. 140—Order under s. 133 annot direct works to be done which are not necessary for the safety of the public, 31 Mad. 280 ... CII
- S. 133, 138, 140 and 101—Jury failing to return the verdict—Appointment of a fresh jury—Magistrate's discretion, 12 C. W. N. 1047 ... OX
- S. 133 and 140—Order directing accused to protect his will according to the instruction of the Local Fund Overseer—Validity—Notice under S. 140—Whether condition precedent to punishment for dis-obedience of order under S. 133, (3 M. L. T. 403) ...XCHH
- S. 138—Public nuisance—Claim of title to land—Bona fide of claim—Limitation question, of, 35 Calc. 283 ... LX
- S. 144—Breach of the peace—Apprehended—Power of a Criminal Court to take property in dispute into custody—Proceeding under Sec. 144.—High Court's power to interfere—Restoration of matters to the original condition, 12. C. W. N. 1049 ... CXI
- S. 145—Magistrate holding inquiry under Section 145 cannot direct Subordinate magistrate to take evidence—Order based on such evidence void as made without jurisdiction, 31 Mad. 82 ...XLVII
- S. 145—Trial as in a Civil suit—Settlement proceeding order in, if to be given, effect to, 12 C. W. N. 773 ...LXXV
- S. 145—Omission to examine witness and inquire into the question of possession—Absence of a party—Signature of the judicial officer in a judicial order, 12 C. W. N. 771 ...LXXVI
- S. 145 Cl. 1—Preliminary orders defective—Grounds for likelihood of a breach of the peace not set forth, 4 M. L. T. 213 ...CXIII
- S. 145—Possession by the manager of a joint Hindu family can be protected by a magistrate by proceedings under S. 145 of the Code, 31 Mad. 318. ... OXII
- S. 145—Division of crops—Magistrate—Jurisdiction of, 8 Cal. L. J. 242 ... CXI
- S. 145—Possession—Dispute concerning land—Jurisdiction of

- Magistrate—Proper question for determination—Doctrine based not on oral evidence, but on settlement proceedings, 35 Cal. 765 ... CXI
- S. 145*—Irregularity amounting to want of jurisdiction—Interference by the High Court. 12 C. W. N. 848 ... XCV
- S. 145*—Title—Possession—Handing over profits to party, 7 C. L. J. 369 ... LX
- S. 145*—Applicability to disputes as to possession between manager and member of a joint Hindu family, 1 M. L. J. 348 ... CII
- Ss. 145, 369*—Jurisdiction—Review, 35 C. L. 350 ... LX
- Ss. 145, 146 and 148*—Refusal to grant time for regular proceedings to be followed—Attachment under *S. 146*—When the parties did not file written statements or produce evidence—Illegality, 12 C. W. N. 890... XCV
- S. 145 or S. 107*—Dispute relating to fishery—Proper section to proceed under, 12 C. W. N. 487 ... XLVI
- S. 145, 435*, clause 3—Likely—Imminent or probable—Discretion of Magistrate in fit cases—Powers of the Revisional Court, 1 Sind L. R. Cr 50 ... XLVII
- Ss. 145, 435 and 437*—Revision—Procedure—Irregularity not prejudicial to either party, 30 All. 41 ... XLVIII
- S. 162*—Bombay City Police Act (IV of 1902) *S. 63*—Evidence Act, *Ss. 24 and 167*—Amended Letters Patent 1865, cl. 26—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused—Admissibility of, 32 Bom. 111 ... XLVIII
- S. 190 (B.) (C)*—Cognizance under, 14 Bar L. R. 250 ... CXIII
- S. 190 (c)*—Action under—Preliminaries, 12 C. W. N. 1075. CXIV
- S. 190*—Power of Magistrate to order prosecution of offender not arrested by police—First information report—Final report, 4 L. B. R. 187=7 Crim. L. J. 414 ... LXXVI
- S. 195, 476*—Indian Penal Code, *Ss. 193, 210*—Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under *S. 476*—Court—Interpretation, 32 Bom. 184 ... LXXVII
- S. 190, 192 and 254*—Cognizance by District Magistrate without a complaint—Validity of, 1 Sind L. R. 119 ... CXIII
- S. 195*—Application for sanction to prosecute—Dismissal of the application for default—Appellate Court cannot grant on appeal—Dismissal of application for default not permissible under the Code, 32 Bom. 203 ... LXXVI
- S. 195*—Sanction to prosecute—Penal Code, *Ss. 196, 211*—

- Fake Case**—False evidence, 7 C. L. J. 167 **XLIX**
- Ss. 195 (b) and 376**—Sanction to prosecute—Instigating the chowkidar in lodging information—Sessions Judge's power to grant—Penal Code, S. 211, 12 C. W. N. 575—7 Cal. L. J. 378... **LXI**
- S. 195**—Sanction to prosecute—Revision—Power of District Magistrate. A. W. N. 1908, 74 **LXI**
- S. 195**—Sanction to prosecute—Jurisdiction to grant or revoke sanction, 30 All. 109 **LXI**
- S. 194**—Object of, 14 Bur. L. R. 207 **CII**
- S. 195**—Sanction to prosecute—By whom application for sanction may be made, A. W. N. 1908, 209 **XCV**
- S. 195 (a)**—Sanction to prosecute—Village Munsiff whether Subordinate to Sub-Magistrate, 4 M. L. T. **OXIV**
- S. 195 cl. (6)**—Appeal Court granting sanction if refused by first Court, 4 Nag. L. R. 140... .. **OXIV**
- S. 195**—Sanction to prosecute given by an Appellate Court—Power of revoking it, 3 P. W. R. 64 **XCV**
- Ss. 195, 537**—No sentence of competent Court to be reversed for want of sanction under S. 195, 31 Mad. 80 **L**
- Ss. 195, 439**—Sanction to prosecute—Revision—Powers of High Court, 30 All. 243 **XCV**
- Ss. 195 (6), 439**—Power of High Court in revision—Jurisdiction—Revision of Civil Court's sanction to prosecute, 4 L. B. R. 138 = VII C. L. J. Cr. 416 **LXXXVII**
- Ss. 195, 439**—Power of High Court—Order by Judge refusing to set aside an order sanction prosecution—Revision—Order not specifying the place or occasion of offence defective, 5 All. L. J. 247 = 1908 A. W. N. 102, 247... .. **IXI**
- Ss. 195, 235**—No sanction required when the actual offence charged—Charged is not one for which sanction is necessary under S. 195 of the Code of Criminal Procedure though the facts alleged disclose an offence for which no prosecution can be entertained without sanction under that section, 31 Mad. 43 **XIII**
- Ss. 196, 537**—Penal Code S. 505 (b)—Complaint—Want of order authorising filing of complaint—Irregularity—Revision—Criminal cases—Facts, 9 P. L. R. 448 **LXXXVII**
- Ss. 196, 537 (a) and 431**—Absence of formal complaint—Immaterial accused when not prejudiced where trial concluded soon, High Court's power of—Revision as regards finding on facts, 3 P. W. R. 20 **LXIII**

- Sa. 197, 527*—Power of Local Government to specify Court of trial of public servant—Local jurisdiction—Magistrate, 4 L. B. R. 265 ... CIII
- S. 198*—"Person aggrieved." — Bigamy — Complaint by a brother of the husband—Penal Code, S. 495, 11 O. C. 148 LXXVII
- S. 199*—Complaint instituted by husband under S. 498, Indian Penal Code—Subsequent death of husband—Effect of, 1 Sind L. R. 72... LXXXVII
- S. 202*—"Accused" who is right of person complained against to intervene if no process is issued, 4 Nag, L. R. 81 ... LXXXVIII
- Ss. 202, 204, 242, 244 and 434*—Case being tried by a Magistrate who issued process on complaint without inquiry under S. 202, Criminal Procedure Code—District Magistrate ordering the police subsequently to make independent investigation even as head of Excise Administration illegal—Interference by Chief Court—Excise Act XII of 1896, 3 P. W. R. 1 ... L
- Sa. 203 and 437*—Complaint—Grounds for dismissal of order for further inquiry—Notice to the accused not essential, 11 O. C. 261... CV
- S. 205*—Pardah woman—Her personal appearance when to be dispensed with—Issue of summons in warrant case—Magistrate's power to cancel warrant and substitute summons—Personal appearance when to be enforced, 3 P. W. R. 51 ... XCV
- Ss. 209, 439*—Committing Magistrate—His functions of inquiring into a case triable by a Court of Session, 3 P.W.R. 84... CXIV
- Ss. 222, 233, 234, 235*—Three distinct offences of criminal misappropriation and two distinct ones of forgery cannot be tried together, 5 A. L. J. 400 ... LXXXVII
- S. 233*—Charges under *Ss. 124A and 153 A*, I. P. Code at the trial, 10 Bom. L. R. 848... CXV
- Ss. 223, 233, 234, 235, 236 and 287*—Joinder of charges—Penal Code, secs. 124A and 153A—Publication in sedition, 10 Bom. L. R. 81 ... CIII
- Ss. 233, 234, 235*—Misjoinder of charges—District offences on different dates during the same trial—Presidency Magistrates—Refusal to take oath or answer questions—Penal Code, ss. 178 and 179, 35 Calc. 161 ... LXIII
- Ss. 234, 235*—Object of—Alternative, 14 Bur. L. R. 242 ... OXV
- Ss. 234, 235*—Charge—Misjoinder of charges—Illegality, A. W. N. 1908, 152 ... LXXXVIII

- S. 239—Joint trial—Irregularity, if fatal, 4 Nag. L. R. 71, LXXXVIII
- S. 247—Summons case—Absence of complaint—Order of “Struck off” by Magistrate—Second complaint—Order of acquittal and discharge—Practice and procedure, 10 Bom. L. R. 628... LXXXIX
- Ss. 248 and 247—Commitment to the Court of Sessions under sec. 347 not controlled by sec. 208—High Court’s Criminal Appellate Jurisdiction—Power to quash commitment to High Court—Sessions, 12 C. W. N. 1014 ... CIII
- Ss. 257, 257—Refusal of Magistrate to issue process to witnesses where none of the ground mentioned in s. 257 exists is illegal, 31 Mad. 131... LXIV
- S. 259—Accused discharged—Jurisdiction to entertain fresh complaint, 4 Mad. L. T. 140... CIV
- Ss. 260, 261—Summary trial—Jurisdiction of the Court to hold—How to be determined, 12 C. W. N. 1041 ... OXV
- Ss. 260, 261—Summary trial—Jurisdiction of the Court to hold—How to be determined, 12 C. W. N. 1041 ... OX
- Ss. 271 (2), 342—Accused pleading guilty—Procedure postponing conviction to allow confession to be considered against co-accused—General examination of the accused, 5 A. L. J. 505 ... CIV
- Ss. 287, 288, 350 and 436—“Order him to be committed” —“Committing Magistrate”—Meaning of, 2 Cr. L. Repl. 59 ... LI
- S. 289—Misjoinder of parties—Same transaction—Meaning of —Prejudice to the accused, 1 Sind L. R. 73 ... LXXXVII
- S. 292—Evidence adduced through prosecution witnesses—Right of reply, 1 Sind L. R. 91 ... LXXXIX
- Ss. 297, 298—Misdirection to the jury—Evidence Act, secs. 27, 30—Statement of co-accused leading to the discovery of relevant fact, when evidence—Statement of a witness before investigating Magistrate—No evidence, 18 M. L. J. 67 ... LI
- S. 307—Session Judge—Jury—Difference between judge and jury—High Court not confined to points of difference, but can consider the whole case—Penal Code, s. 395—Dacoity—Essentials of the offence, 10 Bom. L. R. 632... LXXXIX
- S. 337 (2), 339—Accused to whom pardon is tendered ought to be examined as a witness and not be put into the dock at once, 31 Mad. 272... CV
- Ss. 337, 339—Withdrawal or revocation and forfeiture of pardon—When the question of forfeiture should be taken up and the approver tried—Impropriety of putting the approver back in-

- to the dock and committing him for trial in the same proceeding with his co accused, 7 Cr. L. J. 245 LXIV
- *S. 342*—Scope of, 5 A. L. J. 505 CV
- *S. 342*—Object of, 14 Bur. L. R. 233 OXV
- *S. 342 ch. (2)*—Exemption under—Voluntary—Affidavit in support of a transfer application—Indian Penal Code, ss. 182 and 211, 1 Sind L. R. 124 CXVI
- *S. 350*—Denovo trial—Change of trying Magistrate, 12 C. W. N. 416 LIII
- *S. 350 and 528*—Transfer—Magistrate—Succession of Magistrates—Transfer of case from one Magistrate to other—Denovo trial—Practice, 35 Calc. 457=7 C. L. J. 488 LXXXVIII
- *Ss. 367, 424*—Judgment of Appellate Court's not supplementary to that of first court, 35 Calc. 138 LXIV
- *S. 388 (1)*—Fine—Release on security—Suspension of sentence of imprisonment in default of payment of fine—Distress warrant, 4 L. B. R. 151=7 Cr. L. J. 452 XC
- *Ss. 394, 395*—Magistrate cannot award imprisonment in lieu of whipping when on certificate of the Medical officer before infliction of whipping is reduced, 31 Mad. 84=2 Cr. L. Repl. 60 LII
- *Ss. 397, 123*—Imprisonment under, 4 M. L. T. 223 OXV
- *S. 407, 408*—District Magistrate may withdraw part heard appeals—Such Magistrate not bound to examine witnesses summoned, 31 Mad. 277 CV
- *S. 407*—Withdrawal of appeal—Party heard appeal—Withdrawal—Omission to examine witnesses by Court from which the appeal was withdrawn, 18 M. L. J. 89 LII
- *Sec. 423*—Charge to jury—Misdirection in the charge—Holds of charge, 10 Bom L. R. p. 565 XC
- *Ss. 423, 439*—Conviction of two offences—Appeal—One of the convictions set aside—Sentence not reduced, 3 M. L. T. 312 LXV
- *Ss. 435, 437, 439*—District Magistrate cannot under sec. 437 set aside an order of discharge on the ground that the lower Court had not appreciated the evidence properly, 31 Mad. 133=3 M. L. T. 231 LXV
- *S. 436*—Discharge—Commitment by District Magistrate case not "triable exclusively by the Court of Session"—Jurisdiction, A. W. N. 1908, 189 XC
- *Ss. 437, 202, 204*—Notice—Dismissal of complaint—Order of further inquiry without notice to the accused, 3 P. W. R. p. 25 LXV

- S. 437—Notice to the accused—Forgery—Sanction of the Civil Court to prosecute proceedings under the Registration Act arising out of the same transaction, if good without sanction, 12 C. W. N. 822 XCVI
- S. 439—Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive, 32. Bom. 162 LII
- Ss. 439—Revision—Practice—Discretion of Court as to entertainment of application in revision, 30. All. 116 LXVI
- Ss. 439, 88—High Court's power to revise order passed by a Magistrate investigating a claim as a third party to the attachment of the property of an absconding offender, 3. P. W. R. 81 ... OXVI
- Ss. 439, 476—Revision—Criminal cases—Sanction to prosecute—Powers of Chief Court when order of prosecution is passed by Revenue Civil Court, 9. P. L. R. 317 LXVII
- Ss. 439, 476—Acquittal—Revision on facts as well as Law—High Court power to expunge damaging remarks against witnesses Approvers prosecution for forgery when allowed, 3. P. W. R. 53 XCVI
- S. 476—Nearest Magistrate of the first class Directory—Trial by another Magistrate a mere irregularity, 1 Sind L. R. 81 XC
- S. 476—Order for prosecution—Penal Code Sec. 211—False charge, laying of charge laid before the police report directing charge as false—Judicial enquiry, order directing—Procedure, 7 C. L. J. 371 LXVI.
- S. 476—Prosecution for offence committed before predecessor in office—Practice, 35 Calc. 144 LXVI
- S. 476—Prosecution Order for—Indian Penal Code Ss. 114, 119, 193 and 210,—Cognizance in the course of a judicial proceeding—Jurisdiction—Judicial proceedings—Execution proceedings, 35 Calc. 133 LXVI
- S. 476—Prosecution for giving false evidence six weeks after the alleged commission of the offence—Legality thereof, 4 M. L. T. 26 9 OXVII
- S. 476—Jurisdiction of High Court—Civil Jurisdiction—Civil Procedure Code S. 622 Charter Act (24 and 25. Vict. C. 104) S. 15—Nature of High Court's revisional jurisdiction—Criminal Proceedings say of pending—Civil appeal stay not justifiable when it would defeat ends of justice, 35 Cal. 909 OXVIII
- S. 476—Order under section must be made during or immediately after the conclusion of the proceedings, 31 Mad. 140 ...XCVII

- S. 488—Res judicata—Effect of previous order, 18 Bur.
L. R. 260 CXVII
- S. 488—"May"—Discretion, 18 M. L. J. 150=3 M. L.T.269.LXVII
- S. 488—Reason for refusing to live with husband, 14 Bur.
L. R. 240 OXVIII
- S. 488—Magistrate has a discretionary power in granting
maintenance—Refusal to grant when guilty of adultery with one
of lower cast, not a wrong exercise of such discretion, 31 Mad.185.XCVII
- S. 498—Bail in non-bailable offences—Discretion—Exer-
cised by the Judge, 5. A. L. J. 419 XO
- S 498—Bail—Discretion of Sessions Judge in admitting to
bail a person charged with non-bailable offence, A.W.N. 1908, 195. XCVII
- S. 526—Apprehension that fair and impartial trial cannot
be had—Local inquiry accompanied by a partisan of the com-
plainant—Transfer, 12 C. W. N. 748... .. XCI
- Ss. 526, 145—Transfer of case under S. 145, Criminal Pro-
cedure Code—"Criminal case," 11 O. C. 61 LXXIX
- S. 528—Transfer of case by District Magistrate—Case re-
manded by Sessions Judge---Notice to accused person, 8 Cal. L.
J. 241 CXIX
- S. 562—Reference to superior Magistrate—Power of Ma-
gistrate under sec. 380—Criminal Procedure Code—Disposal of
case, 4 L. B. R. 150=7 Cr. L. J. 449 XOI
- S. 562—Penal Code, sec. 420, 3 P. W. R. 62 XOVII
- Damages*—Questions incriminating plaintiffs—Privilege, 4 M. L. T.
222 565
- Decree*—Sale—Execution—Right of purchaser—Estoppel by conduct
—Mortgage, 4 M. L. T. 330... .. 566
- Defamation*—Want of justification—Effect of—Defamation of a
class—Rights of individuals of the class, 12 C. W. N. 480 270
- Easement*—Release—Non-user—Extinguishment—Transfer—Domi-
nant and servient owner—Alienation—Civil Procedure Code, sec.
276, 35 Cal. 889 566
- Ejectment*—Suit in—Plaintiffs entitled two-thirds of the property—
No claim for partition, 4 M. L. T. 215 567
- Estoppel*—Non-transferable mortgage of landlord's purchaser in exe-
cution of money decree if can question the transferability—Es-
toppel—Evidence Act, sec. 115 if exhaustive—Transferability ques-
tion of, 8 C. L. J. 24 393
- Evidence*—Admissibility—Statement made by a witness to a Police
Inspector or to an investing Magistrate who is not committing
Magistrate though in the presence of the accused not admissi-
ble as evidence, 31 Mad=3 M. L. T. 270 LXVIII

Evidence Act—S. 25, 26—Admission before Police—Information given by 1st accused upon which 2nd accused was questioned—Stolen property recovered, 2 Or. L. Repl. 62 ...	LIV
——— S. 45—Experts—Lunary—Value of report—Optinion, 10 Bom. L. R. 1004 ...	567
——— S. 91—Promissory Note—Loss of proof of contents, 5 A. L. J. 162 ...	211
——— S. 91—Oral evidence to prove consideration, 13 Bur. L. R. 217 ...	18
——— S. 91, 95, 97—Where sale deed gives wroug survey numbers to the lands sold evidence is admissible to show the real lands intended to be sold, 30 Mad. 397 ...	19
——— S. 91, 92—‘Terms of the contractor’—Question as to the parties contracting— Oral evidence—Admissibility—Proof that obligor signed as member of the firm, 17 M. L. J. 1 ...	155
——— S. 92—Admitting oral evidence against law—Revision—C. P. Code S. 622, 114 Bur. L. R. 58 ...	318
——— S. 92—Formality of document, 14 Bur. L. R. 231 ...	527
——— S. 92—Oral Evidence—Out and out sale—Fraud, Govind v. Tejuji. (S. A. 30 of 1907) ...	IV 11
——— S. 115—Non transferable occupancy jote—Presumption of transferability without consent of landlord from purchase by him, 35 Calc. 904... ..	567
——— S. 115—Estoppel—Adoption—Suit by adoptive mother to set aside an adoption made by her, A. W. N. 1908 231 ...	568
——— Ss. 115 and 156—Estoppel—Landlord and tenant—Tenant estopped from denying title of landlord, P. L. R. 1907, No. 96... ..	112
——— Ss. 124, 162—Income Tax Acts secs. 14, 26 and 33—Statements made to Income Tax—Collector—Admissibility in evidence—Right of the Court to inspect, 4 M. L. T. 317... ..	528
Fraud—Rights of an attaching creditor—Apparent sale to third party of property not really bringing to the judgment-debtors—Claim by apparent purchaser recognised in suit—Suit by purchaser for possession, 4 M. L. T. 881	568
——— Preference of creditors, 3 P. W. L. 534	569
Gift—Validity of Gift E. W. N 147, 43 L J. 357	III 15
Grant—Act XI of 1859—Regulation XIX of 1793—Sale—Encumbrance—Liability to pay rent, 35 Calc. 931	569

THE LAWYER.

1st JANUARY 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL).

Act 19 of 1841—Property Protection—Hindu Law—Mitakshara—Survivorship—Inheritance—Succession—District Judge, jurisdiction of—Irregularity—High Court—revisional powers of. A Hindu governed by the Mitakshara Law died leaving him surviving a widow, a daughter by a previous wife, and two brothers. On his death the brothers applied under Act XIX of 1871 to the District Judge for the delivery of possession of the deceased's property on the ground that it formed part of the property in the joint names of their deceased brother and themselves. The District Judge granted their application. The widow contested this claim and now applied to the High Court to have the order of the District Judge set aside:—*Held*, that on the death of a member of a Hindu family governed by Mitakshara, there is only an accession to his property by the other members by survivorship, and no succession by inheritance; and that the provisions of Act XIX of 1841 had no application to the present case; and the District Judge should not have taken any action under this Act but have left the parties to seek their remedy by a proper suit for establishment of their title. *Jusoda Koonwar v. Gouree Byjnath Pershad*, 6 W. R. (Mis.) 53, followed. *Held*, further that the District Judge acted in the present case (supposing him to have jurisdiction to hear the application) illegally and with material irregularity; and that the petitioner was prejudiced thereby. *Held*, also, that the High Court had full jurisdiction in revision to set aside the order of the District Judge. *Fulchand v. Kismesh Koer*, 4 C. W. N. Notes CCXVI, and *Abdul Rahiman v. Kutti Ahmed*, 10 Mad. 68, referred *Brette & Cox J. J.*

Sato Koer v. Gopal Sahu, 34 Cal. 929.

Agra Tenancy Act (II of 1901, local) S. 92.—Suit for exclusive possession of an occupancy holding—U. P. Land Revenue Act (III of 1901

Local) S. 44 Revenue—Court refusing to correct an entry—Jurisdiction of Civil Court. Where a suit is brought by the plaintiff for exclusive possession of an occupancy holding on the ground that the defendant is a trespasser, it cannot be regarded as a suit for division of an agricultural holding, and S. 32 of the Agra Act does not bar it. *Achhey Lal v. Janaki Prasad*, 1906, 26 A. W. N. 274, distinguished.

The decision of the Revenue Court refusing to correct an entry in the revenue register as to the name of a tenant cannot preclude the plaintiff from maintaining a suit in the Civil Court. S. 44 of the Agra and Oudh Land Revenue Act refers to registers A. D. and not to register E. *Bannerji J.*

Ajodhya Singh v. Ram Dyal, 4 All. L. J. 769.

———Ss. 177, 199, 200—Question of proprietary title—Appeal—Civil and Revenue Courts—Jurisdiction. When a Revenue Court under the powers conferred on it by S. 199 of the Agra Tenancy Act, 1901, decides a question of proprietary title it becomes for the moment a Civil Court; an appeal lies at the instance of either party to the District Judge, and if such an appeal is wrongly preferred to and decided by a Commissioner, such decision will have no effect in preventing the Revenue Court's decree from becoming final. *Knox & Richards J. J.*

Genda v. Sukh Nath Rai, A. W. N., 1907, 271.

———Ss. 193 (2) and 34—Suit for rent—Set off—Held that in a suit for rent brought under section 34 of the Agra Tenancy Act, 1901, it was not competent to the defendant to plead as a set-off the payment by him as *lambardar* of Government revenue for land comprising that in respect of which rent was claimed. *Bannerji J.*

Ram Chandar v. Mona, A. W. N., 1907, 269.

———S. 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title himself—Res judicata.] In a suit for ejectment under Act No. II of 1901 the defendant did not plead their own title a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res-judicata*. *Griffin J.*

Bihari v. Sheobalak, 29 All. 601

Appeal. C. P. Code, Ss. 473(c) 588 (23)—Decree—Order—Interpleader suit. An adjudication upon the claims of defendants in an interpleader suit is a decree and appealable as such under section 540 of the Code

of Civil Procedure and not under section 588 of the Code. *Bannerji J.*

Maharaj Singh v. Chittar Mal, A. W. N., 1907, 270. = 4 A. L. J. 683.

————— *Valuation of suit—Forum of Appeal*,—*Bengal N. F. P. and Assam Civil Courts Act (XII of 1887) s. 21*—*Suit for recovery of land and mesne profits—Interest on mesne profits—Court-fess Act (VII of 1870) s. 11.* Held by *Rampini A. C. J. Brett, Mitra and Woodroffes, J. J.* that when in a suit for possession of land and mesne profits, which was originally valued at a sum below Rs. 5,000, and which was instituted in the Court of Subordinate Judge, but in which the whole amount actually found due, inclusive of mesne profits payable by the defendant to the plaintiff, was over Rs. 5,000, an appeal would lie to the High Court and not to the District Court. When a plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively, and prays that the amount may be ascertained in the suit, the amount found by the Court to be due to him must be generally be regarded as the value of the original suit for the purpose of determining the *forum* of appeal. *Gulab Khan v. Abdul Wahab Khan* 31 Cal. 365 approved. Held also, that interest *pendente lite* on the mesne profits should not be taken into account in estimating the value of the original suit. Held by *Mookerji J.* that the rule formulated in *Gulab Khan v. Abdul Wahab Khan* 31 Cal. 365 was too wide and required to be qualified; that where a plaintiff was permitted by section 50 of the Code of Civil Procedure to put upon the relief claimed by him any approximate or tentative value, and the Court determined the amount which the plaintiff was entitled to recover, such amount, if accepted by the plaintiff as the value of the relief claimed by him, determined the value of the suit and consequently, the *forum* of appeal, under section 21 of Act XII of 1887.

Ijjatulla Bhuyan v. Chandra Mohan Banerjee. 34 Cal. 954.

Attachment, Effect of—*Creates legal rights though it creates no charge having priority over other creditors—Action maintainable for wilful infraction of such right, without jurisdiction—An attaching creditor does not acquire any charge on the attached property which would give him priority over other creditors claiming ratable distribution or over the general body of creditors proving in an insolvency of the judgment-debtor. He however requires a right to have the property kept in custodia legis for the satisfaction of his debt. An internal interference, without sufficient justification, with such right is an actionable wrong for which an action will lie.* *Fredrick Peacock v. Madan Gopal* distinguished. *Kreshnaswami Mudaliar v. Official Assignee of Madras* 26 Mad., 673 distinguished. Where pro-

party attached in execution is removed by one who is not a party to the suit, the decree-holder must enforce his claim by a separate suit and not in execution. *Mirza Mahomed Aga Ali Khan v. The Widow of Balmakund*, (L. R. 3 L. A., 241 distinguished. *Benson & Wallis J. J.*

Sankaralinga Reddi v. Kandasami Tevan 30 Mad., 413 = 2 M. L. T. 365.

Baluch Mahomedans—Muhamadan Law—*Evidence to prove custom at variance with it inadmissible*—*Bengal N. W. P. and Assam Civil Courts Act (XII of 1887) S. 37*—*Baluchi Muhammadans governed by Muhamadan law in regard to succession—Daughters entitled to inherit—Relinquishment.* In regard to succession among Baluchi Muhammadans, held, that under S. 37 of the Bengal Civil Courts Act 12 of 1887, the parties must be governed by the Muhammadan law. Hence evidence to prove a custom in a family excluding daughters from inheritance—such custom being at variance with the ordinary law—was inadmissible and was rightly rejected. *Jammya v. Diwan*, 23 All. 20 followed.

There is as much authority in the Koran for the daughters of a Muhammadan taking shares in their father's estate as there is in the case of sons. A deed of abandonment executed in reliance upon the generosity of the party benefited was held to be without consideration. *Stanley C. J. & Burkitt J. Ismail Khan v. Imtiaz*, 4 A. L. J. 792.

Benamidar—Suit for sale on a mortgage—Decree giving benamidar a right to redeem—Right to redeem not availed of—Subsequent suit for redemption by alleged beneficial owner barred. A decree for sale on a mortgage was passed giving a right of redemption to a puisne mortgagee. The puisne mortgagee did not redeem and the decree became absolute. Held that no subsequent suit for redemption would lie by a person alleging that he was the real puisne mortgagee and that the person whose name appeared in the decree as puisne mortgagee was merely a benamidar. *Aikman J.*

Kaniz Fatima v. Wali-ullah, A. W. N., 1907, 272 = 4 A. L. J. 684.

Bengal Tenancy Act, S. 106—Suit between rival proprietors—Scope of suit—Question of possessing or title—Limitation Act S. 22—Substitution of executor in place of supposed legal representative—New defendant. In a suit under S. 106 of the Bengal Tenancy Act, certain lands were alleged to have been erroneously recorded as part of mouzah P. and it was prayed that the record-of-rights be amended and disputed lands entered as part of plaintiffs own mouzah R. from the record of which the same had been omitted. The suit was instituted more than two months after

the final publication of the record-of-rights for mouzah R. but within two months of the final publication of the record-of-rights for mouzah P.

Held that the suit was not time-barred. In such a suit the Revenue Officer, and in case the suit is transferred to the Civil Court, the Civil Court is confined to the question of possession and cannot be asked to adjudicate upon the title of rival proprietors. The suit was originally instituted against the person whose name was entered in the record-of-rights. But it appeared that this person was the widow of the deceased proprietor and her name was entered as representing the estate of her deceased husband.

Held, that the executors to the estate of the deceased proprietor who were substituted as defendants were not new defendants within Section 22, Limitation Act.

Woodroffe & Cox J. J.

Mohunt Padmalai v Lukmi Rani, 12 C. W. N. 8.

———**Ss. 159, 193**—*Falkar rent*—Falkar rent is rent within the meaning of the Bengal Tenancy Act and sec. 153 is applicable to a suit for recovery of such rent.

Mookerji J.

Kanai Mahaldar v. Madhu Sudan 6 C. L. J. 669

———**Ss. 166, 167**—*Occupancy-holding—Mortgage—Incumbrance annulment of fraud*—Where an occupancy-holding which had been mortgaged by the rayat of the holding was purchased by a person in execution of a decree for money obtained by him, and the purchaser re-purchased it in execution of a rent decree against the old tenant for arrears which had accrued previous to his first purchase and annulled by a notice under sec 167 the mortgage of which he was aware at the time of his re-purchase.

Held that the purchaser did not commit any fraud in re-purchasing the property and was entitled to annul the mortgage, and the mortgagor was not entitled to get a decree upon the mortgage making the holding liable for the mortgage debt.

That the purchaser was not bound as representative of the old tenant to pay off the decree for rent obtained by the landlord.

Rampini & Sharfudin J. J.

Mohan v. Bansidhar Marwari 11 C. W. N. 114.

Burma Civil Courts—Law relating to gifts—Section 4 of the Upper Burma Civil Courts regulation Act 1 of 1895 (or sec. 13 of the Burma Laws Act) only refers to cases of succession, inheritance, marriage or caste, or any religious usage or institution,

Held that questions relating to gifts, which do not fall under these heads must be governed by the Statute Law contained in sec. 25 of the Contract Act No. IX of 1872.

Shwe Tu v. Mishan Abdul Gafur v. Deyamsingh, 13 Bur. L. R. 342

Burmese Law—*Right of surviving parent over joint property.* *Held* that it was settled law that, when one parent dies, the surviving parent has an absolute right of disposal over one half out of the joint property.

Moore J.

Maung Shwe Thaung v. Maung Shwe Hman, 13 Bur. L. R. 334.

—————*Dhammathats.* There is a fairly general consensus of authority in the *Dhammathats* that of the property taken by the father to the second marriage, the children of the first marriage shall receive three-fourths and their step father one-fourth. But the property referred to is the property of the first marriage and the children of the first marriage are awarded a larger share in this property because it was their parent's property at the commencement of their union. The property being considered as belonging equally to their father and his first wife, the children of the first marriage take the whole of their mother's share, namely, half, being her sole representatives, and half of their father's share, in which they are considered as having equal rights with the offspring of the second union as represented by their mother.

The *Dhammathats* agree that the division, whether between children of the two marriage, or between children of the first marriage and their step mother, is always *per stirpes* and not *per capita*.

Held, following the principle which underlies the rules for division of property acquire during the first marriage viz. that the children of that marriage take the whole of their mother's and one half of their father's share, the children of the first marriage are entitled to half of any property inherited or otherwise acquired by their father between the death of his first wife and his second marriage.

The question referred was, when property, moveable or immoveable, is inherited by a man after the death of his first wife, by whom he has a son and before his marriage with his second wife, by whom he has children, to what share of such property is his son by his first marriage entitled after his death?

Held that under the circumstances set out in the order of reference, the son of first marriage is entitled to one half share in the property inherit-

ed by his father after the death of his first wife but before his marriage with his second wife.

Hartnoll & Moore J. J.

Ma Laik v. Maung Nwa, 13 Bur. L. R. 277.

C. P. Tenancy Act, S. 45.—*Scope of.* Section 45 of the Tenancy Act has no application to agricultural leases which do not affect proprietary rights.

Bhagirathi Bai v. Anyaji Kunbi, 3 Nag. L. R. 159.

Calcutta Municipal Act (B. C. III of 1899), Ss. 198, 466 and Sch. II. Rules (1), (2) and (7)—*Eicense—Liability of lime-trader—Licensee to take out separate license to store lime.* A lime-trader who has obtained a license under S. 198 and rules (1) and (2) of Schedule II of the Calcutta Municipal Act in respect of his lime business, is not exempted by rule (7) of the Schedule from taking out a separate license to store lime as required by S. 466 (1) of the Act.

Stephen & Coxe J. J.

Bepin Behari Fhose v. Corporation of Calcutta, 34 Cal. 973.

Civil Procedure Code, Ss. 13, 43.—*Res judicata—Usufructuary mortgage—Suit for possession of mortgaged property—Tender of mortgage money—Deposit in Court—Redemption decree—Second suit to recover mesne profits from the date of deposit to the date of recovery of possession of mortgaged property—Transfer of Property Act, Ss. 62, 83—Position of mortgagee in possession after the tender or deposit of mortgage money.* In 1884 the plaintiffs executed a usufructuary mortgage in favour of the defendant and placed him in possession of the property. In 1901, the plaintiffs tendered the amount of the principal to the defendant, but it was not accepted. The plaintiffs in consequence filed a suit, under S. 62 of the Transfer of Property to recover possession of the mortgaged property, and at the same time under S. 83 of the Act deposited the amount of the principal in Court as the amount payable on the mortgage. The Court passed a decree for possession.

In 1904 the plaintiffs filed another suit to recover mesne profits from the defendant from the date of the deposit to the date when he recovered possession of the mortgaged property from the defendant in execution of the redemption decree in the previous suit. The claim was disallowed on the ground of *res judicata*.

Held, that the plaintiffs having failed to ask for mesne profits in the previous suit, his present claim was barred either under S. 13 or 43 of the Civil Procedure Code.

The profits derived by a mortgagee after proper tender made or after

the amount due has been deposited in Court are profits for which he has to account to the mortgagor in virtue of a liability tacked on, so to say, by the statute to the mortgage contract; and as such a claim to them by the mortgagor is one arising from and connected with his right to redeem or recover possession of the property.

From the date of the tender or of the deposit, as the case may be, the mortgagee continues as mortgagee but with a statutory liability to account for the profits received by him from that date. He is not then a mere trespasser but a mortgagee still, holding the property as a kind of trustee for the mortgagor and as such accountable to the latter for the profits.

Rukhminibai v. Venkatesh, 31 Bom. 527.

———— **Sections 13 and 208—Execution of decree—Interpretation of decree—Reference to judgment and award—Amendment of decree—Res-Judicata—Jagir—Attachment of—Objection—Pensions Act (XXIII 1871), Section 11—Jagir income is exempt from attachment under section 11 of the Pensions Act, 1871—**When the terms of a decree are clear and unambiguous, the Court can not refer to judgment or the award in case the judgment is passed on an award.

The fact that property not liable to attachment *e. g.* Jagir income, has been improperly attached on one or more occasions does not debar the judgment-debtor from pleading exemption when it is subsequently attached.—35 P. R., 1900: s c., P. L. R. 1904, p. 357. XXXI, Cal., 822, referred to.

Robertson & Chitty J.

Muhammad Qamar ud-Din Khan v. Lachminath, P. L. R. 1907.

———— **Section 13—Res-judicata—Matter directly and substantially in issue—Finally decided—Claiming under the same title—Same parties—Suit by reversioners against widow for declaration that alienation by her in favour of her daughters was invalid—Daughters not made parties—Decision not binding on daughters—**Some of the reversioners to the estate of a childless male proprietor sued for a declaration that the alienation made by his widow in favour of one of his sons-in-law was invalid as against their reversionary rights.

Held, that the decision in the suit as to the question of succession which arose on the widow's death, was not binding on the daughters of the proprietor who were no parties to it, for the question whether the reversioners had a preferential right was neither in issue nor judicially determined by the Court. The matter now in issue was not such as ought to have been made ground of defence in the former suit. *Kensington & Lalchand J. J.*

Bhari v. Pir Bakhsh, P. L. R. 1907, No. 76.

———S. 13,—*Expl II—Res judicata—Matter which might and ought to have been made a ground of defence in a former suit*—The plaintiffs sued the defendant to recover certain unspecified sums alleged to have been realized on their behalf by the defendant as refunds of octroi duty. The defendant had previously sued the plaintiffs for a general balance of account, and the plaintiffs, as defendants in that suit, had mentioned, but omitted to counter-claim, the refunds of octroi duty now sued for. *Held* that section 13, explanation II, of the Code of Civil Procedure applied, and the suit was barred.

Griffin J.

Jagan Nath v. Bal Kishan, A. W. N., 1907 275=4 A. L. J. 675

———S. 27—*Court has power to order right persons to be substituted as plaintiffs even when original plaintiff had no right to sue*—Under section 27 of the Code of Civil Procedure when a suit is instituted in the name of a wrong person as plaintiff by a *bona fide* mistake, the Court has power to substitute the names of right persons as plaintiffs and this power is not excluded in cases where the person originally suing has no right to institute the suit.

Benson & Miller.

Krishna Boi v. The Collector and Government Agent, Tanjore
30 Mad., 419.

———S. 23—*Misjoinder of parties and causes of action*—"In respect of the same matter," meaning of—*Practice*—The plaintiff sued two sets of defendants to recover from either the one or the other a sum of money for the rent of his godown. The plaintiff agreed to let a godown to defendants 1—6 from 1st May 1906. At the date of the agreement the godown was in the possession of Messrs N. and Co. Defendants 1—6 alleged that they did not get possession of the premises in terms of this agreement; that only one compartment out of three was given to them on the 22nd May; that they did not get possession of the other two compartments and in consequence they had to hire other premises. Messrs N. and Co. plead that there was an oral agreement with the plaintiff that they should occupy the godown till the end of May 1906; that they gave up possession of one compartment of the godown before the 22nd May 1906 and on the 22nd May they gave up possession of the remaining portion to the plaintiff and the first set of defendants.

The defendants all pleaded that the suit as framed was bad by reason of misjoinder of parties and of causes of action.

Held, disallowing the objection, that the suit was properly constituted. The most convenient way to try all the questions arising between the

plaintiff and the defendants and the two sets of defendants *inter se* would be by one suit where all the three parties are before the Court as parties.

The subject-matter in respect of which the plaintiff seeks relief is the rent of his godown. It is the same matter as regards both sets of defendants and both sets of defendants are interested in the adjudication of the questions involved in the suit.

The general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are more or less interested, although the relief against them may vary, but that separate causes of action against separate defendants quite unconnected or not involving any common question of law or fact cannot safely be joined in one action.

The object of section 28 seems to be to avoid multiplicity of suits if it could be done without embarrassment to any of the defendants.

Madan Mohun Lal v. Holloway 21 Cal. 555 followed; *Sadler v. Great Western Railway Company* (1896) A. C. 450, distinguished.

Davar J.

Mowji Monji v. Kuverji Nanaji 31 Bom. 516.

—————**Sec. 45—Misjoinder of parties and causes of action—Mortgage suit.** The plaintiff held four mortgages, three of which were binding on defendants 1 to 12 members of a joint Hindu family. The fourth mortgage was of the share of second defendant alone, in some of the items covered by the other mortgages, and was binding on him and his son the 7th defendant. The eleventh and 12th defendants in the suit were subsequent and prior mortgages of certain items.

Held—that the suit was not bad for multifariousness.

Benson & Wallis J. J.

Arthasaratay v. Thandavarya 17 M. L. J. 515.

—————**Ss. 103, 310 and 588—Appeal—Order refusing to restore an application under section 310 which had been dismissed for default of appearance—Held.** that no appeal lies from an order refusing to restore to the file of pending applications an application under section 310 of the Code of Civil Procedure which has been dismissed for default of appearance. The principle applied in *Jung Bhadar v. Mauadeo Prosad*, 31 Cal., 207, *Ningappa v. Gangawa* 10 Bom., 433, and *Raja v. Sirinivasa* 11 Mad., 379 followed.

Bannerji J. J.

Ghasiti Bilai v. Abdul, 29 All. 596.

———**S. 157**—*Scope of*—Sec. 102, 158—S. 157 expressly empowers the Court to dispose of the suit under sec. 102, in the event of the plaintiff failing to appear on any day to which the hearing is adjourned.

Held, also that sec. 151 was intended to apply cases in which, after the first hearing had commenced, time was given to a party for some specified object, such as the production of accounts, or to obtain the attendance of an absent witness.

Moore J.

Maung Ohu v. S. Dhar. 13 Bar. L. R. 333

———**sec. 232**—*Sale of property, the subject of a decree—right to execute the decree.* The sale of property for the possession of which the vendor has obtained a decree does not necessarily carry with it the right to execute the decree.

The vendor obtained a decree for possession of certain property. He sold portions of the property to the respondents who applied for execution of the decree; held, that no application could legally be made to execute the decree under sec. 232 of the Civil-Procedure Code. *Knox Ag. C. J. & Richards J.*

Hansrajpal v. Mukhraj 4 A. L. J. 759 = A. W. N. 1907 p. 280.

———**sec. 244**—*No bar—suit by purchaser for compensation for trespass by decree holder, judgment debtor and others.*—A suit by the auction-purchaser in a court sale for compensation for trespass committed on the property purchased, by the decree holder and judgment debtor along with some others before the auction purchaser obtained possession is not barred by sec. 244 C. P. C., the question not being one arising out of the execution of the decree.

Miller J.

Kolintavita v. Kolintavita 17 M. L. J. 543.

———**S. 257 (a)**—*Agreement of satisfaction of judgment debt—Contract Act, sec. 2 (d) and 27—Interpretation of statute—Held*, by a majority (of four out of five Judges) of a Full Bench of the Punjab Chief Court, that, sec. 257 A, of the Code of Civil Procedure applies only to the Executing Court and does not render an agreement for satisfaction of judgment debt void for all purposes P. R. (civil) No. 88 of 1904, *overruled* P. R. (civil) No. 854 of 1897, *followed* P. R. (civil) No 16 of 1900 *approved* *Robertson J.* *Contra*.—The scope of section 257 A of the Civil Procedure Code, is not limited to execution of decrees, but is of general application P. R. No. 88 of 1904, *approved*.

Chatterji J.—Sec. 257 of the Code of Civil Procedure, applies only to execution proceedings and does not apply to contracts in supersession of

of the decree, when they are sought to be enforced, provided that the decree is superseded by the terms of the contract coupled with adjustment in a Court or without such adjustment when the decree is not enforced or becomes barred by time in consequence of taking no step in aid of its execution.

F. B.

Atmasingh v. Banke Rai 2 P. W. R. 419

———**Sec. 257 A**—*Contract Act* *secs. 2, cl. (g), 23 and 24*—*Mortgage bond*—*Consideration made up of several items*—*Decretal debt of one of the items*—*Sanction of the Court not obtained*—*Effect on the bond*—N. G. sued to redeem a mortgage. The consideration of the mortgage consisted *inter alia* of an account due under a decree. The decree did not provide for interest, whereas interest was chargeable on the decretal amount included in the mortgage. The lower appellate Court held that as the agreement had been sanctioned under section 257 A of the Civil Procedure Code the whole mortgage bond was void.

Held, reversing the decree of the lower Court, that though the provision in the mortgage bond regarding the decretal amount could not be enforced, the remaining provisions were good and enforceable at law.

Russell C. J. & Heaton J.

Bhagabai v. Narayan 31 Bom. 552

———**sec. 258**—*Adjustment not certified*—*Plea in bar of execution*.—An adjustment of a decree out of Court by an agreement to accept a smaller sum in full satisfaction of the decree, can not, unless certified under sec. 258, C. P. C. be pleaded as a bar to the execution of the decree as to the balance. (*Periathambi Udayan v. v. Vellaya* I. L. R. 21 M. 409 and *Ganpati v. Chenga* 29 M. 312 followed. *Ramayyar v. Ramayyar* 21 M. 356. not followed.

Wallis & Miller J. J.

Veerapa Chettiar v. Ponnayya 17 M. L. J. 527.

———**sec. 258**—*Scope of—not confined to many decrees*.—The provisions of section 258 of the Civil Procedure Code are applicable to all decrees and are not confined to money decrees.—*VI Cal.*, 786; *XXV Cal.*, 718; followed. *XXII Mad.*, 182; *XXIV Mad.*, 412 dissented from.

Robertson & Chitty J. J.

Lachu v. Kishen Lal 8 P. L. R., 1907 No. 82.

———**s. 268**.—*invalid attachment*—The omission to prohibit the creditor from receiving the debt and omission to fix up the prohibitory order in some conspicuous part of the Court-house are sufficient to vitiate at-

payment of a debt made under Section 268 of the Civil Procedure Code.

Sadharam v. Karam Chand, 3 P. L. R., 1907. No. 79

—secs. 311, 312 and 313—*Execution of decree—Sale in execution—Objection subsequently taken by the judgment-debtor that the property sold was not legally saleable—Estoppel.*—Held that a judgment-debtor who might have raised objections to a sale in execution of a decree against him, but who has refrained from doing so, and who might have appealed against the order for sale, has no right, after the sale has been carried out, to prefer an objection that the property sold was not legally saleable. *Ramchhai-lar Mier v. Bechu Bhagat*, 7 All. 641, and *Durga Charan Mandal v. Kali Prassanna Sarkar*, 25 Cal., 727, followed. *Aikman J.*

Umed v. Jas Ram, 29 All. 612.

—sec. 316 *Execution of decree—Sale in execution—Decree reversed before confirmation of sale.*—Held that the title of an auction purchaser at a sale held in execution of a decree does not become absolute if the decree under which the sale took place is reversed at any time before a certificate of sale is granted to the purchaser. *Aikman J.*

Ram Sukh v. Ram Sahai, 29 All. 591

—Secs. 331, 332—*Decree for delivery of possession of immovable property—Obstruction to delivery by third party in good faith—His remedy.*—Sec. 331 of the Civil Procedure Code contemplates an application by the decree holder, and a third party refusing the delivery of possession of property to a decree-holder cannot apply for the investigation of his claim under this section but may do so under sec. 332 of the Code after he has been dispossessed. *Woodroffe & Coxe J. J.*

Sukhan Singh v. Baij Nath 11 C. W. N. 115

—S. 357—*Scope of.*—It is for the applicant to satisfy the Courts that the statements in his application are substantially true, and before making an order under the section the Court must be satisfied that the applicant committed any of the acts specified in clauses (b) (c) and (d) of the section.

Fox C. J. & Hartnoll J.

Arnachellam v. Maung Pwe 13 Bur L. R. 321

—S. 375—*Incorporation in compromise decree of terms which are not unlawful, though outside the scope of suit cannot be objected to in execution.*—Where a compromise between the parties to a suit embraces matters not relating to the suit, and the decree following such compromise gives reliefs which are not unlawful, but which could not have been given

if the suit had been decided after trial, any objection to such decree on the ground that it is in contravention of section 375 of the Code of Civil Procedure, must be taken by way of appeal and not in execution of the decree.

Benson & Wallois. J. J

The Manager of Sri Meenakshi Devasthanam, Madura v. Abdul Kasim Sahib 30 Mad 421.

—————**Sec. 452**—*Guardian ad litem married woman—Husband alive but non composmentis*—In no cause can a married woman be appointed as guardian *ad litem*, in as much as she is so disqualified and any apparent appointment of her as guardian is not a mere irregularity. A woman whose husband is alive but non-composmentis cannot be appointed as guardian *ad litem* of her minor son. *Shamlal v. Ghasita* 23 All, 459 followed.

Knox C. J. & Dillon J,

Kundanlal v. Gajdhar 4 A. L. J. 628

—————**S. 506**—*Arbitration—Reference made orally, but reduced to writing by the Court—Irregularity*—Where both parties to a pending suit consented to a reference to arbitration and an order of reference was then and there made by the Court in the presence of the parties, though not upon a written application, it was held that it was not open to the Court, having regard to the provisions of section 510 of the Code of Civil Procedure, to supersede that reference, the arbitrator not having declined to act. *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan* (6 Moo. I. A. 134) distinguished *Shama Sundram Iyer v. Abdul Latif* 27 Calc., 61 and *Luxumbai v. Hajee Cassum* (23 Bom, 629) followed.

Aikman J.

Abdul Hamid v. Riaz-ud-din A. W. N. 1907, 273.

—————**sec. 522**—*Arbitration—Award—Decree on award made without allowing time to file objections—Appeal*.—An appeal will lie from a decree passed in accordance with an award if such decree has been passed without allowing to the parties the time prescribed by law for filing objections to the award. *Ibrahim Ali v. Mohsin Ali*, 18 All., and *Maharajah Joymungal Singh Bahadur v. Mohan Ram, Marwarce* 23 W. R., 429, followed.

Stanley C. J. & Burkitt J.

Najm-ud-din Ahmad v. Puech 29 All. 584.

—————**sec. 559**—*respondent getting a decree against a co-respondent*.—A respondent cannot get a decree against a co-respondent when he has submitted to the decree of the Court of first instance and has not filed an

appeal separately. *Farzand Ali Khan v. Bismillah* 27 All. 23 followed.

Lohra v. Sita 4 A. L. J. 772.

Construction—Repealed statute—Mamlatdars' Courts Act (Bom. Act III of 1876), sec. 4—Mamlatdars Courts Act (Bom. Act II of 1906), sec. 5—Mamlatdars Court Suit for possession of a house situate within town—Jurisdiction—Act of procedure. Per Curiam:—The repealed statute is, with regard to any further operation, as if it had never existed.

Rusell C. J. & Batty J.

Vajechand v. Nandram 31 Bom. 545.

Construction—Power of attorney—Power of attorney are to be construed strictly, that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that, on a fair consideration of the whole instrument, the authority in question is to be found within the four corners of the instrument, either in express terms, or by necessary implication. *Bryant v. La Banga in Peuple* (1883) A. C. 179 referred to

Brett & Mooheree J. J.

Ghasiram v. Raja Mohan 6 C. L. J. 639

Contract Act, s. 56—Application of sale not completed—return of deposit—rescission of contract.—Sec. 56 of the Contract Act provides for a case in which the performance of the contract becomes impossible otherwise than by some act of the promisor. The contract does not become void if the promisor does something which renders the performance of the contract impossible. Where the parties to a contract agreed to sell and purchase certain property but did not get the sale completed in ten months after the agreement and allowed the property to be auctioned, held that the reasonable inference from their conduct was that the parties had rescinded the contract.

Bannerji J.

Ganga Dei v. Asa Ram 4 A. L. J. 778

—**sec. 69—Money paid by purchaser towards an incumbrance subject to which he buys, not recoverable under—Res judicata—Erroneous decision on a question of law how far a bar in subsequent suit—**Where a purchaser of property at a Court sale purchase it subject to a charge for maintenance, such purchaser cannot, under section 69 of the Contract Act, recover from the owner in whose hands it was so liable, payments made by him (the purchaser) towards maintenance to prevent the sale of the property. An erroneous decision on a question of law in previous suit is no bar, in a subsequent suit, between the same parties, to the Court deciding

the same question, provided the decision in latter suit does not in any way question the correctness of the former decree or in any way affect its operation.

Benson & Wallis J. J.

Manglathammal v. Narapanswami Aiyar 30 Mad. 161

———**Court fees**—*Partition, suit for*—*Court Fees Act, sec. 7 sub. sec. 7, sub-section IV cl. (b) and Art. 17, cl. VI*—*Partition—Joint property—Denial of the extent or quantum of interest—Ejectment*—A suit for partition of joint property is governed by art. 17 cl. VI of the Court Fees Act, and the plaint is properly stamped if a Court fee of rupees 10 is paid upon it. Reference under the Court Fees Act 4 M. L. J. 110 dissented from.

S. 7 sub-sec IV. cl. (b) of the Court Fees Act refers to a suit for joint possession and not to a suit for partition. *Velu v. Kamora* 20 Mad. 289, 7 M. L. J. 30 dissented from. A partition is not a substitute of ejectment, because partition implies an existing joint possession and enjoyment to be converted into possession in severalty *Clappa v. Bromagham* (1827) 9 Coven. N. T. 530 and *Florence v. Hopkin* (1871) 1 Sickles N. J. 182 followed.

When, therefore, the plaintiff has possession of what is a joint estate, a denial of the extent of that estate or of the quantum of the plaintiff's interest therein, does not convert the suit into one for recovery of possession of land. *Mohendra v. Ashutost* Calc. 762 approved.

When the plaintiff is admittedly in possession of what is joint property and is a co-parcener with the defendant, but it is denied that all the properties alleged by him to be joint properties have really that character the suit is one for partition and the plaint is properly stamped, if a Court-fee of ten rupees is paid upon it.

It is essential that the plaintiff should be in actual or constructive possession of the properties and whether he has such possession or not, has to be determined in view of the principle that the possession of one co-owner is *prima facie* the possession of all the co-owners and his possession is to be presumed in conformity with his right and title as co-owner. If it is established that the plaintiff is in possession of no portion of the joint property, that there has been a complete ouster, he must sue for recovery of possession and partition and pay *advalorem* Court-fees upon a plaint appropriately framed for the purpose.

Mookerjee & Caspersz J. J.

Bidhata Roy v. Ramcheritra 6 C. L. J. 651

Creditor & debtor—Relation of—Although an unqualified admission

of a debt implies a promise to pay, yet if there is a covenant and an agreement to pay which is not absolute but qualified in its terms, for instance, if there is a covenant to receive payment out of a specified fund it does not create the relation of creditor and debtor as upon a simple loan of money.

Whether there is such a covenant must depend upon the construction of the instrument in each case and the intention of the parties as evidenced by the circumstances. An implied authority to agree to the payment of a particular rule of interest must be made in the same manner as implied authority to raise a loan.

Brett & Mookerjee J. J.

Ghasiram v. Raj Mohan 6 C. L. J. 639

Custom—Succession—Adoption—Adopted son dying without male lineal descendants—The estate of an adopted son dying without any male lineal descendants is inherited according to custom by the heirs of his adoptive father and not by the heirs of his natural family 58 P. L. R., 1901 overruled.

Rattigan & Lalchand J. J.

Gurditta v. Aitar Singh 8 P. L. R. 1907, No. 77

Dekhan Agriculturist's Relief Act (XVII of 1879) sec. 15 B—Decree for redemption—Power to give instalments—Interest provided by the decree can not be subsequently cancelled—Section 15 B of the Dekhan Agriculturist's Act does not allow the Court to cancel a direction for payment of interest contained in the decree.

The section says that the Court in the course of any proceedings under a decree for sale may direct that any amount payable by the mortgagor under that decree shall be payable in such instalments on such dates and on such terms as to the payment of interest as it thinks fit. But the interest is as much payable under the decree as the principal and the section does not say that the Court may direct that any amount payable under the decree shall not be payable; it merely empowers the Court to modify, in the particular manner there described, the terms of the payment

Jenkins C. J. & Heaton J.

Gokuldas v. Gobind 9 Bom. L. R. 1334

Easement—Right of privacy—Defendant not allowed to give himself increased facilities for overlooking plaintiff's zenana. Held that the fact that the plaintiff's zenana house might be to some extent overlooked by persons standing on the roof of the defendants' house was no justification for the defendant's opening fresh doors or windows in the wall of their upper storey looking towards the plaintiffs' house, whereby the plaintiffs' house might be overlooked without the person inspecting it being visible to the occupants of that house.

Knox J.

Abdul Rahman v. Bhagwan Das, 29 All., 582,

Evidence Act, S. 32, cl (5)—Admissibility in evidence—Kursinama—Statements by members of family as to relationship—Document admitted in first Court without objection—Objection to admissibility not allowed on appeal. In an application for Letters of Administration, the right of the applicants to be considered the next heirs of the deceased depended on proof that the relationship between their great-great-grandfather and the great-great-grandmother of the deceased was that of full brother and sister. To prove this a *kursinama* or geneological table, made by the ancestress of the deceased "by the pen of gomasta," and alleged to have been filed by her in 1804 in a suit to establish the same fact, and a certified copy of an *ewaznama*, or deed of exchange, dated 17th January 1872 and corroborating the *kursinama* as to the relationship, were produced by the applicants. The *kursinama* was admitted in the first Court without objection. Both documents, which were pronounced genuine and admissible in evidence by the District Judge, were held by the High Court to be forgeries :—*Held*, that the *kursinama* was admissible in evidence. *Held*, also, that it was too late on this appeal to object to the inadmissibility in evidence of a document which had been admitted without objection in the first Court. The certified copy of the *ewaznama* was also held to be admissible in evidence. On the question of the genuineness of both documents, their Lordships supported the conclusion arrived at by the District Judge, and held that the title of the applicants was established. (P. C.)

Shahzadi Begam v. Secretary of State for India, 34 Cal. 1059.

—**S. 91.—Oral evidence to prove consideration.** The amount of the consideration is clearly one of the terms of a document, but the question of whether it has been paid or not is not, as notwithstanding an admission in a sale deed that the consideration had been received, it is open to the vendor to prove that no consideration has been actually paid, and the Evidence Act does not say that no statement of fact in a written statement may be contradicted, but that the terms of the contract may not be varied. *Sah Lalchand v. Indarjit*, 22 All. 370 followed.

Held, therefore, that evidence of any oral agreement to show that the consideration in the present instance was in reality different from that stated in the deed was inadmissible for the purpose of varying its terms.

Fox C. J. & Hartnoll J.

Baboo Sheodut v. C. R. M. Ramaswamy, 13 Bur. L. R. 217.

—**Ss. 91, 93, 97—Where sale deed gives wrong survey num-**

bers to the lands sold, evidence is admissible to show the real lands intended to be sold. The general rule laid down in section 91 of the Evidence Act is subject to the exceptions laid down in sections 95 and 97 of the same Act. Where a sale deed describes the land sold by wrong survey numbers, extrinsic evidence is admissible to show that the lands intended to be sold and actually sold and delivered were lands bearing different survey numbers.

Benson & Bodlam J. J.

Karuppa Goundan v. Periatthambi Goundan 30 Mad. 397.

Execution of decree—Mortgage—Decree for sale of mortgaged property after redemption of prior usufructuary mortgage—Sale in satisfaction of all debts. One Dhanman Das obtained a decree for sale on a simple mortgage conditioned on his redeeming two prior usufructuary mortgages, and this decree was made absolute. *Held*, on application by transferees of this decree for sale of the mortgaged property, in satisfaction not only of the simple mortgage debt but also of the amount due on the prior mortgages which Dhanman Das had paid off, that the decree-holders were entitled to sale as ordered by the decree. Whether the decree was rightly or wrongly passed, it had become final and could not be questioned in execution proceedings. *Bhagwan Das v. Bhawani* 26 All., 14) and *Abdul Qayyum v. Sadr-ud-din* (Weekly Notes, 1905, p. 11) distinguished.

Knox & Richards J. J.

Jai Gobind Tawari v. Patersri Partap Narain Singh, A. W. N. 1907, 286.

Execution sale—Warranty of title—C. P. Code s. 315—Held, that in auction sales there is no implied warranty of title either by the sheriff or by the judgment-creditor,

Held, also that the right of the auction-purchaser to recover his purchase money in the case of immoveable property is a right which is expressly conferred by section 315 of the Civil Procedure Code and that he may recover his money either by summary procedure under that section or by a regular suit, but that in either case his right to recover depends upon sec. 315. *Held* further that, in the case of moveable property, there is no such provision, that there being no warranty of title, the auction purchaser buys at his own risk; and that he cannot, except in the case of fraud, recover his money, although he had to give up what he purchased,

Moore J.

San Baw v. Twe Pru 13 Bur. L. R. 323

Fishery right—Intidal and navigable river when the river changes

*its course—Right of Government—*When a tidal and navigable river shifts its course, fishery rights continue to subsist in the river in its new course. Government has the right to lease fishery rights in tidal and navigable rivers. *Narindra Chandru* 10 C. W. N. 540 distinguished.

Rampini C. J. & Sharfudin J.

Ayub Ali v. Dayabibi 11 C. W. N. 105

Hindu Law—Adoption—When sapinda consents on condition that adopted son should not claim the property of his adoptive father, adoption not thereby invalid.—When a sapinda in giving his consent to an adoption, protects himself from loss by stipulating that the adopted son should not claim a share in the joint family property in the enjoyment of such sapinda, the consent of the sapinda is not given from corrupt or improper motives and the adoption will be good. *Rani Reddi v. Rengamma* (II M. L. J., 29), distinguished. *Benson & Wallis J. J.*

Srinivasa Aiyangar v. Rangasami Ayyangar 30 Mad., 450. 2 M. L. T. 364.

———**Allienation by widow—Gift to reversioner for the time being if passes absolute title.** If a Hindu widow transfers her interest to the then reversioner, the latter can hold the property against the person who is the reversioner when the widow dies. *Gunga Pershad v. Shumboonath* 22 W. R. 393, *Nobo Kishore v. Hari Nath*, 10 Cal. 1102.

Maclean C. J. & Holmwood J.

Ana li v. Indra Bhusan 12 C. W. N. 49.

———**Gift of considerable portion of moveable or immoveable joint family property invalid—Acquiescence.**—An undivided member of a Hindu family governed by the Mitakshara Law, has no power to alienate any considerable portion of the moveable or immoveable properties belonging to the joint family by way of gift to the female members of the family. When the portion so alienated is not severed from the family property; but the income alone is given to the donees, the objecting coparcener is not barred by acquiescence from questioning the alienation merely because he did not object to the payment of such income. *Bachoo Harkisondas v. Mankorebai*, (29 Bom., 51), distinguished. *Ramasawmy Ayyar v. Venjulusami Ayyar*, (22 Mad., 113), distinguished.

Boklam & Miller. J. J.

Kamaksh Ammal v. Chakrapany Chettiar 30 Mad., 452

———**Gift—Daughter—Marriage portion—joint family Managing member—Capacity of—**A Hindu father is entitled to make gifts

by way of marriage portions to his daughters out of the family property to a reasonable extent.

A Hindu brother, managing member of a joint family, will not be acting in excess of his powers as such, in giving away a reasonable portion of the joint family property to his sisters, who though married in their father's life time, were left, for some reason or other, without a marriage portion.

Held also that in the circumstances of the case, and having regard to the state of the family, that the father of the plaintiffs not only might properly have made the gift in question to the daughters, the plaintiffs but that he ought to have made it. (*Ramasami v. Vengidusami* I. L. R. 22 M. 113 referred to.)

Wallis & Miller J. J.

Kilumbi v. Srimat Tirumala 17 M. L. J. 528

———**Joint family—Suit—Adult members parties—Minor members not impleaded, how far bound—jurisdiction of Court to pass a decree for sale of the whole family property.**—A court is competent to pass a decree making the the whole family property liable in a suit to which only the adult members of the joint are parties, and a sale in pursuance of such a decree is not a nullity.

The minor members of the family cannot after the expiry of the period of limitation prescribed for a suit to set aside the decree successfully institute a suit for recovery of their shares in the property.

Arnold while C. J. & Miller J.

Pondala v. Yana Jagannadha 17 M. L. J. 541.

———**Dayabhaga—joint property or self-acquisition—Money received at marriage by a member.**—Money received by a member of a joint Hindu family at marriage is not joint family property.

Rampini C. J. Sharfudin J.

Adhar Chandra v. Nobin Chandra 11 C. W. N. 103.

———**Specific performance of contract to sell undivided share of joint family property**—A contract to execute a sale deed conveying an undivided share of Hindu joint family property can be specially enforced Possession cannot be given unless the other members of the family are parties to the suit.

Thakur Rewash Singh v. Hardayal 3 N. L. R. 160.

———**Stridhan**—Property obtained by a step-mother after partition between two sons by instituting a suit.—In the case of property ob-

tained by a mother on partition made by her husband in his life time or by the sons after her husband's death, the property must be deemed to be the *stridhan* of the mother and would go to her daughters in preference to the sons. Where, therefore, the mother after partition mortgaged her share, held that it could be sold in execution of the decree against her. *Ohhiddu v. Nanbat* I. L. R. 24 All. 67 and *Strilal Rai v. Surajhali* I. L. R. 24 All. 82, followed. This question was not decided by the Privy Council in *Sheo Skankar v. Debi Sahai* I. L. R. 24 All. 468 *Gambhir Singh v. Makraddhuj* 4 A. L. J. 673. Banerji J.

—**Succession**—*Mitakshara*—*Bandhus*—*Daughter's son's son* entitled to preference over *daughter's son*—*Variance between pleading and proof*.—A plaintiff who sues on and fails to prove an alleged gift, may rely on his title by inheritance. Under the *Mitakshara Law* among persons claiming to succeed as *Bandhus*, preference may be extended so as to prefer, all other considerations being equal, that claimant between whom and the stem there intervenes one female link to that claimant who is separated from the stem by two such links. A daughter's son's son will have preference over a daughter's daughter's son. White C. J. & Miller J.

Tirumalachariar v. Andal Ammal 30 Mad., 406.

—**Succession**—*Co-widows' interest in the property of their deceased husband*—*Right of assigning her share*—*Partition*—*Alienation of her share*—*Valid during her life-time*—*Survivorship*.—It is the right of each of the co-widow to enjoy her deceased husband's property by partition *inter se*, both under the *Mitakshara* and the *Mayukta*. She can, therefore, assign her share to anyone she choose; and if she has already obtained her share by partition, she can alienate that share. But in either case the assignment or alienation cannot take effect or have validity beyond her life-time. It is good as long as she lives: and, on her death, her interest in the property ceases and the share goes to the surviving co-widow or co-widows as the case may be. Chandavarkar & Heaton J. J.

Hari v. Vial 31 Bom. 560.

—**Widow**—*Gift from husband's estate by widow to daughter*—*Transfer by daughter to her sister*—*Suit by reversioner*—*Declaratory decree*—*Discretion of Court*—*Specific Relief Act s. 42*.—A Hindu widow, in possession as such of her husband's estate, transferred portions of this estate to her daughters. One of the daughters subsequently transferred a part of her share to one of her sisters. After the death of the transferor her son instituted a suit for a declaratory decree that all these transfers were invalid. Held that under such circumstances no declaratory decree

ought to be given. *Bhupal Ram v. Lachma Kuar* 11 All., 253 followed.
Aikman J.

Tulsha v. Baru, A. W. N., 1907, 269.

Idol—Holding property—Properties dedicated to a family idol may be converted into similar property by the consensus of the family.—
Held—That in this case the properties if originally debutter, have been converted with common consent.

In dealing with a question as to whether properties alleged to be debutter are really debutter or only nominally so, the manner in which the dedicated properties have been held and enjoyed is the most important point for consideration.

Release by Government is not conclusive evidence of property being debutter.

Nemaye Churn v. Jogendra 21 W. R. 365 followed. Shebaiti right cannot be transferred even to a co-shebait or to one who is next in succession. *Mancharam v. Pranshanker* 6 Bom. 298 not followed.

Quere—Whether an idol which has been broken is capable of holding property.
Rampini C. J. & Sharfuddin J.

Gobinda Kumar v. Debendra 12 C. W. N. 98.

Inam—Madras Enfranchised Inams Act, Act IV of 1866—Service inam enfranchised in widow's name under Act IV of 1866 not alienable by widow beyond her own life time.—The enfranchisement of a service inam does not involve a resumption by Government and a fresh grant in favour of the persons named in the title-deed. It disannexes the inam from the office, converts it into ordinary property and releases the reversionary rights of the Crown in the inam, but does not confer on the persons named in the title-deed any right in derogation of those possessed by other persons in the inam at the time of the enfranchisement. Case law considered. *Narayan v. Chengalamma*, 10 Mad., approved. *Gunasaiyan v. Kamakchi Ayyar*, 26 Mad., 339, approved. A Hindu widow cannot alienate beyond her own life-time service inam enfranchised in her name under Madras Act IV of 1866
F. B.

Pidgala Lakshmipathi v. Bommireddipalli 30 Mad. 434.

Jhansi Incumbered Estates (Act 16 of 1882) Ss. 8 and 23,—Mortgage—Unlawful consideration—Contract Act s. 23—Transfer of Property Act, s. 43. Held that a mortgage executed by a mortgagor who was at the time disqualified under section 8 of the Jhansi

Incumbered Estates Act, 1882, was a contract entered into for an unlawful consideration within the meaning of section 23 of the Indian Contract Act, and section 43 of the Transfer of Property Act, 1882, could not be prayed in aid to empower the mortgagee to bring a suit for foreclosure after the mortgagors' disability has ceased. *Bannerji & Aikman J. J.*

Radha Bai v Kamod Singh, A. W. N. 1907, 276.

Jurisdiction of Civil Courts—Order of Magistrate for maintenance under s. 488 of the Code of Criminal Procedure does not oust the jurisdiction of Civil Courts—No injunction to restrain proceedings under s. 488—The first defendant obtained an order for maintenance under s. 488 of the Criminal Procedure against plaintiff. In a suit brought by plaintiff subsequently against the first defendant and her minor son, the second defendant, for a declaration that the defendants had no right to a share in or maintenance out of his properties:—*Held* (1) that the suit was not one to set aside the Magistrate's order for maintenance and was sustainable. The Magistrate's order did not take away the jurisdiction of the civil Courts. (2) No suit will lie for an injunction to restrain proceedings under an order made by a Magistrate under section 488 of the Code of Criminal Procedure. *Veeran v. Ayyammah*, (2 Weir, 614) approved, *Mahomed Abid Ali Kumar Kadar v. Ludden Sekibu*, followed. *Subhadra Madra v. Basdeo Dube*, 18 All., 29), explained. *White C. J. & Miller J.*

Deraje Malinga Maika v. Marati Kaveri 30 Mad. 400

Landlord and Tenant—Ejectment—Permanent or precarious tenure—Presumption as to permanent tenure—Unchanged rent—Transfer of tenure—Recognition by landlord of transfers—Deeds of sale. construction of—Receipts for rent not expressly describing transferee as tenant of holding. In a suit for ejectment on the ground that the defendant was a mere tenant at will, it appeared that the tenure had been in existence for about 80 years; that the rent had never been enhanced though the value of the holding as measured by its sale-price had greatly increased; that it had again been sold by kobalas purporting to convey an absolute interest; that it had passed by will; and that the new tenants had been recognized by the landlords after such devolution.

Held, that the inference was that it was a permanent tenure. On the construction of the kobalas: *Held*, that the insertion therein of a stipulation that the transferee should take a new *pottah* in his own name did not create a new tenure. *Uponnra Krishna v. Ismail Khan* 32 Cal. 41, *Nilratan v. Ismail Khan* 32 Cal. 51 and *Ramchunder v. Jugha Chunder* 11 B. L. R. 220, followed. Receipts for rent, though not expressly the transferee of the tenure as tenant of the holding, stated that the

rent paid was the rent of the tenure, and the person paying was the occupier of it, and was paying on her own account; *Held* that there was a sufficient recognition of the transferee as tenant. P. C.

Naba Kumari Debi v. Behari Lal Sen, 34 Cal. 902.

—————*Ejectment—Res judicata—Denial of landlord's title—Dismissal of previous suit for rent, on denial of relationship of landlord and tenant.*—In a previous suit brought by the plaintiff against the defendant for rent the latter denied the existence of the relationship of landlord and tenant. The suit was dismissed on the ground that the defendant was not the plaintiff's tenant. Plaintiff now sued to eject the defendant:—*Held*, that having regard to the decision in the previous suit, the plaintiff was entitled to treat the defendant as trespasser and to sue him for ejectment.

Rampini & Sharfudin J. J.

Khater Mistri v. Sadruddi Khan, 34 Calc. 922.

—————*Lease—Assignee's liability whether commencing from date of assignment*—The liability of the assignee of a lease arises by reason of his privity of estate and this privity of estate is created by the transfer to him and not by his obtaining possession. *Benson & Wallis J. J.*

Subraya Habbara 2 M. L. T. 363

—————*Company's Batta—Abwab*—A claim for Company's Batta which represents the conversion of seeka into Company's rupees is not an ~~and but~~ properly forms apart of the rent. If it is proved that the Company's Batta has been paid without dispute for many years, and its legality is questioned by the tenant, the onus is not upon the landlord to prove that the rent was originally fixed in Sicca rupees *Macpherson J.*

Ram Khelwan v. Kumar Rai 6 C. L. J. 667

—————*Notice to quit—Denial of title*—A defendant who denies the plaintiff's title and possession under him and alleges that possession with a third party under another person altogether is not entitled to a notice to quit. *Chidambaram Pillai v. Saleapathy* (1 M. L. T. 218) followed.

Benson & Milber J. J.

Kishakimyakath Abdulla Nath v. Karuthummakkakath. 2 M. L. T. 368.

Land Acquisition Act (X of 1894) secs. 18, 20, 21—Reference to special Judge—Scope of enquiry—Parties addition of, after reference—Contesting award on matters outside the reference—In a reference

under sec. 18 of the Land Acquisition Act, it is not open to the special Judge to go into questions raised by parties who did not object to the award and apply for a reference. Where the reference under sec. 18 related to a dispute regarding apportionment between parties A & B.

Held—That the special Judge was wrong in allowing parties C & D to be added on their own application and contest the award on a ground not raised in the reference.

Gobind Kumar v. Dolaeram 12 C. W N. 90

Land Registration Act (VI of 1876, B. C.) sec. 55—Land Registration dispute—Reference to Civil Court—Conditions to be satisfied before making reference—“ Possession ” meaning of—Mahomedan Law—Dower—Widow's right to hold property till dower paid—High Court Decision—Before the Collector can order the name of an Applicant to be registered as proprietor of an estate or any interest therein under the provisions of the Land Registration Act, he must satisfy himself that the possession of the estate exists in the applicant as alleged or that succession or transfer has taken place as alleged and that the applicant has acquired possession in accordance with such succession or transfer, but not otherwise. The determination of the question of possession alone is sufficient when the applicant claims to have assumed charge as joint proprietor on behalf of his co-sharers or as manager. When, however, the applicant claims to be proprietor by succession or transfer, the Collector has to satisfy himself on two points,—namely, that the succession or transfer has taken place and that the applicant is in possession accordingly. If the succession or transfer is proved but possession is found against the applicant, his name cannot be registered, or conversely, if possession alone is proved, but the succession or transfer is not established, i. e. if the possession proved is not attributable to the title set up the application for registration must be refused.

The first duty of a Collector in a case of dispute is to determine whether any person is in possession of the disputed interest. If possession is found to with any person, the Collector has no jurisdiction summarily to oust him. He can determine the question of the right to possess or refer it to the Civil Court only when upon investigation no one is proved to be in possession.

Possession in sec. 25 Land Registration Act, does not mean lawful possession, but actual possession which includes possession by receipt of rent, the possession of rent, the possession of the tenant being in a

sense the possession of the landlord

When a Mahomedan widow has obtained possession of the undistributed property of her deceased husband lawful and without force or fraud, she is *prima facie* entitled, as against the other heirs of her husband to retain possession until her dower-debt or any portion of it which is due and unpaid is paid.

The jurisdiction which the Civil Court acquires upon a reference to it under s. 55 of the Land Registration Act is that of a Civil and not of a Revenue Court and its decision subject to revision by the High Court.

The ordinary rule is that where an aggrieved party has other remedy available, e. g. by regular suit, the High Court is unwilling to interfere in revision but even if there be such remedy the High Court may interfere in exceptional cases.

Brett & Mookerjee J. J.

Musst. Umatul Mehdi v. Musst. Kulsoom 12 C. W. N. 16

Land Revenue Code (VI of 1879) sec. 84—Annual tenancy—Determination—Notice by land lord—An annual tenancy to which the Land Revenue Code applies, cannot be determined without a notice in writing by the landlord (or by the tenant).

Jenkins C. J & Heaton J.

Occhavlal v. Gopal Kalyan 9 Bom. L. R. 1332

Letters Patent, cl. 12—Considerations of convenience may be taken into account in granting or refusing leave when part of the cause of action arises within jurisdiction—When part of cause of action arises—The jurisdiction conferred by clause 12 of the Letters Patent in respect of applications for leave to sue when part of the cause of action arises within jurisdiction ought to be exercised with great caution when the defendant is an absent foreigner. Courts in this country are not precluded from taking the question of convenience into consideration in dealing with applications under clause 12 for leave to sue. Part of the cause of action cannot be held to arise at a place, where payment was not originally contracted for merely because after performance of the contract and without any consideration, a promise is made to pay at such place.

White C. J. & Miller J.

Seshagiri Row v. Nawab Askur Jung 30 Ma1, 438.

Limitation—Appeal—Guardian ad litem—Guardian ad litem not made a party by appellant—Limitation. Where a guardian ad litem of a defendant respondent was not made a party to an appeal filed by the

plaintiff until after the period of limitation for filing such appeal had expired, it was held that the appeal was not for this reason time barred. *Khem Karan v. Har Dayal* 4 All, 37 followed.

Stanley C. J. & Burkitt J.

Rupchand v. Dasodha A. W. N., 1907, 200.

—————*Execution—Civil Procedure Code, section 108—Decree set aside as against one of several joint judgment-debtors—Decree passed subsequently against exempted party—*A decree for sale on a mortgage was passed against several defendants jointly on the 25th of August 1900 and made absolute on the 21st December 1901. As against one defendant, however, the decree was *ex parte*, and it was set aside as against her on appeal on the 11th March 1902. Subsequently a decree was passed on the merits against this defendant, and her appeal was dismissed by the High Court on the 16th November 1904. As against this defendant the decree was made absolute on the 27th of November 1905.

Held, that the orders of the 25th August 1900 and the 16th November 1904, between them, operated as one decree for the sale of the mortgaged property; that the joint effect of the orders of the 21st December 1901 and the 27th November 1905 was to make absolute this decree, and that an application for execution made on the 21st December 1905 was not barred by limitation.

Richards & Griffin J. J.

Gauri Sakai v. Ashfaq Husain, 29 All. 623

—————*S. 4—Ground of limitation not taken in memorandum of appeal—Second appeal—Plea of limitation raised for the first time in second appeal—Civil Procedure Code, S. 542—Full Bench, decision of—Practice.* Held by the Special Bench (Woodroffe J. dissenting), that though an objection upon the question of limitation was not raised in the memorandum of appeal, leave should yet be given to argue it as the point arose on the face of the plaint, and no question of fact had to be enquired into to enable the Court to dispose of it, and that when the point was thus taken the Court was bound to give effect to it, the provisions of s. 4 of the limitation Act being mandatory. *Quere*: whether section 542 of the Code of Civil Procedure controls section 4 of the limitation Act. Held by Woodroffe J., that under the circumstances of the case it was a fair and proper exercise of discretion to disallow, under s. 542 of the Civil Procedure Code, the objection which had not been set out in the grounds of appeal. *Per curiam*: A decision of a Full

Bench cannot be questioned except, before a Bench specially constituted for this purpose.
Special Bench.

Balaram v. Mangta Dass, 34 Calc. 941.

———**Ss. 5, 20.**—*Presentation of plaint on opening day after vacation.* A plaint, the period of limitation for filing which expires while the Court is closed for vacation presented on the opening day after the vacation is to be treated as presented in time, although the Prothonotary's office is working in the vacation for urgent work.
Russell J.

Ranchordas v. Pestonji, 9 Bom. L. R. 1329.

———**Art. 10—Preemption suit—Berar.** A separated share of a field in Berar was leased by a registered deed in March 1896 for seven years on a yearly rental. In October 1896 the lessor sold the share by a registered deed to the lessee. There was a stipulation in the sale deed that it was not to take effect until after expiry of the lease, and the lessee continued to pay rent after the execution of the sale deed, *Held* that limitation for a suit for pre-emption brought by a co-occupant in July 1903 began to run from the date on which it was agreed that the sale was to take effect, that the article of the limitation schedule applicable was article 10, and that the preemption suit was not time-barred.

Vesaji v. Ramkrishna, 3 Nag L. B. 193.

———**Arts. 10 and 120—Limitation—Pre-emption suit—Mortgage by way of conditional sale—Punjab Laws Act IV of 1862, S. 12—Joint holding—Bhai nazdiki—Cosharers.** Article 120 of the second Schedule of the Limitation Act governs a suit for pre-emption on a claim in respect of a conditional sale of a share in a joint *koala*. The period of limitation begins to run from the date of expiry of year of grace allowed by Regulation XVII of 1806.

Johnstone & Hurry J.

Sheoji Singh v. Sheoji Singh, 8 P. L. R., 1907, No. 84.

———**S. 20—Partpayment of principal and interest.** S. 20 of the Limitation Act requires that interest must be paid as interest i. e. it must be distinctly stated at the time of payment that it is paid on account of interest, or else there must be evidence from which the payment as interest may be distinctly inferred, and if so, the mere proof of payment is sufficient. Principal must always be paid as principal, but the fact of the payment must appear in the handwriting of the person making the same, i. e. of the debtor or his duly authorized agent; it must appear that the payment is a partpayment of principal, and this fact cannot be proved

aliened by the creditor. The fact, however, of its being a part payment of principal, need not be stated in so many words; it may be inferred from the writing itself.

Russell J.

Ranchordas v. Pestonji, 9 Bom. L. R. 1329.

———Art 29.—Attachment before judgment—Suit for compensation—Limitation—Terminus a quo. Held that the limitation applicable to a suit for damages on account of the alleged unlawful attachment before judgment of a shop belonging to the plaintiff was that prescribed by article 29 of the Limitation Act, and that limitation began to run from the date of the attachment. *Murugesu Mudaliar v. Jattaram Davy*, 29 Mad. 621, *Multan Chand Kanyalal v. Bank of Madras*, 27 Mad. 346 and *Ram Singh, Mohazattur v. Bhotro Manjee Sonthal*, 24 W. R. 298, followed. *Surajmal v. Manekchand*, 6 Bom. Law Reporter, 704, distinguished.

Semle that such an attachment, if wrongful, is not a continuing wrong within the meaning of S. 23 of the Indian Limitation :Act. 1877.

Bannerji J.

Ram Narain v. Umrao Singh, 29 All. 615.

———Art. 44—'Sale' in art. 44 not confined to transfer of absolute ownership only—Finding in previous suit of the invalidity of a sale does not dispense with the necessity of suing to set aside such sale. The term 'sale' in article 44 of schedule II of the Limitation Act is not confined to an assignment of absolute ownership only but means an assignment for a price of the ward's interest whatever that may be. Article 44 will therefore apply to a suit by the ward to set aside an assignment by his guardian of his right as mortgagee. *Gnanasambhanda v. Velu*, 23 Mad. 279, followed. A suit by a ward to recover properties improperly alienated by the guardian will be covered by article 44 and the period of limitation will not be prescribed for a suit for possession of immoveable property. The fact that in a previous suit by the alienee against the ward, to recover some properties which has not passed to his possession under the transfer, the alienation was found invalid will not relieve the ward from the consequences of his failure to have the transfer set aside within the period allowed by law with regard to properties which had passed to the possession of the alienee. When at the time such previous suit was brought, the ward's right to such property had been extinguished under S. 28 of the Limitation Act, the decision will not have the effect of reviving the extinguished right. *Lakshmi Dasa v. Roop Lal*, 30.

Mad. 169, distinguished.

White C J & Aiyer J.

Madugula Lalchiah v. Pally Mukkalinga, 30 Mad. 393.

——— **Arts 62, 120**—*Suit to recover money received under a transaction which is an absolute nullity governed by art. 62 and not 120 and cause of action arises on the date of payment*—A suit by A to recover from B money which B had recovered from a debtor of A under colour of a void assignment of such debt by A to B is an action for money had and received and must be brought within three years of the payment by the debtor to B under article 62 of schedule II of the Limitation Act. Article 120 does not apply to such a case. *Nund Lall Bose v. Meer Aboo Mahomed*, 5 Calc., 597, dissented from. *Mahomed Wahib v. Mahomed Ameer* 32 Calc., 532 followed. S. Aiyer J.

Shanmuga Pillai v. Minor Govindasami 30 Mad, 459

——— **Articles 96, 120**—*Fraud must be fraud on party to the decree or transaction*—*Art. 120 applies to suits by reversioner for relief against fraudulent decree brought about by widow—Cause of action accrues when injury done to reversion—Civil Procedure Code, s. 244—Does not apply when decree itself impugned—Res judicata* Fraud within the meaning of article 95 of Limitation Act is fraud practiced upon a party to the decree or transaction in which the fraud was committed. *Ohunder Nath Chowdhry v. Tirthanund Thakoor* (3 Calc. 504), followed. Article 35 does not apply to suits by reversioner impeaching on the ground of fraud against himself transactions of a preceding qualified owner to which he was no party. The period of limitation applicable to such cases is that prescribed by article 120. If the reversioner brings a declaratory suit to set aside the decree or other transaction brought about by the fraud of the qualified owner, the suit must be brought within six years of such decree or transaction. He is not however bound to bring such a suit and it is not open to him to wait until the succession falls in and if thereafter anything is done constituting an injury to his vested right, then to pursue his remedy. Where property in the hands of reversioner is attached in execution of a fraudulent decree against the widow, the injury is the attachment and a suit for redress in respect of such attachment will not be barred under article 120 if brought within six years of the attachment, which is the cause of action. *Parekh Ranchor v. Bai Vakhat* (1 L. R. 11 Bom., 119 not followed). An objection by the reversioner in execution to the attachment on the ground that the decree is not binding on his reversionary right is not triable in execution under section 244 and any adjudication thereon, not being appealable under section 244 will

not be binding in subsequent proceeding.

White C. J. & Aiyar J.

Sundarappa v. Sreeramulu 30 Mad., 402

—————**Arts. 132, 147**—*Suit on mortgage bond to enforce payment of amount due by sale of mortgaged property—Suit on mortgage in English form for foreclosure or sale—Transfer of Property Act* ss. 58, 68, 100. A suit on a simple mortgage bond to enforce payment of the amount due on the bond by sale of the mortgaged property is governed by article 132 of schedule II of the Limitation Act and not by article 147. The latter article is limited in its application to the one class of mortgages in which alone the suit can be, and always is, brought for foreclosure or sale, that is to mortgages in the English form.

P. C.

Vasudeva Mudaliar v. Srinivasa Pillai 30 Mad., 426.

—————**Art. 135 and 144.**—*Regulation XVII of 1806—Mortgage by way of conditional sale—Adverse possession—Cause of action.* In the case of a mortgage by way of conditional sale foreclosed under Regulation 17 of 1806, the mortgagee is not entitled to recover possession as owner till after the expiry of the year of grace allowed by the regulation and time does not run against him until after the expiry of such year, 90 P. R. 1895 followed.

Lalchand J.

Tek Chand v. Sohail Singh, 8 P. L. R. 1907, No. 72.

—————**Article 164.**—*Civil Procedure Code, Sections. 108 and 208—Ex parte decree—Application to set aside.* The provisions of the Limitation Act must be strictly construed—5 P. R. 1897; 32 P. R. 1897 followed, *Held*, that before the stringent provisions of Article 164 of the Limitation Act could be applied to an application for setting aside an *ex parte* decree, it must be clearly found that there was a proper and valid attachment of the appellant's property.

Article 164 will not apply if it is found that the property attached did not belong to the judgment debtor.

A finding that an application or a suit is barred by limitation does not necessary in every case preclude remedy by revision when it does not appear that all the necessary matters essential for arriving at such conclusion have been fully and properly taken into consideration by the lower Court.

Lalchand J.

Sadharan v. Karamchand 8 P. L. R. No. 79

—**Art 175—C. Second Appeal—Application to bring in legal representatives of deceased respondent, in second appeal—Code of Civil Procedure Ss. 587, 582—Abatement—Death of one of several respondents pending appeal.**—The period of limitation laid down in Article 175C, of the Limitation Act, for an application to bring in the heirs of a deceased party applies to second appeals. Section 587 of the Code of Civil Procedure must be read in conjunction with section 582 of the Code and Art. 175C, of the Limitation Act *Susya Pillai v. Aiyakannu Pillai*, 29 Mad. 529, dissented from. Where one of the plaintiffs respondents in a second appeal against a decree for rent passed in their favour had died and no application was made to bring in his heirs within the period allowed by Art. 175 C, of the Limitation Act:—*Held*, that the appeal had abated so far as the deceased respondent was concerned, but that the appellants were entitled to go on with the appeal as against the other respondents.

Rampini Ag. C. J. & Sharfudin J.

Upendra Kumar Shamlal = 6 C. L. J. 715 34 Calc. 1020.

Madras District Municipal Act (IV of 1884.) Ss. 47, 66 (1)—Tax on houses, a yearly tax—When ownership arises after assessment, such owner liable for whole tax and not only for instalments accruing due after acquisition of ownership.—The provisions of section 66 (1) and other sections of the Madras District Municipalities Act, show that the tax imposed on houses under section 47 of the Act is a yearly tax, although for the sake of convenience it may be made payable in instalments. A person becoming the owner of a house subsequent to such assessment becomes liable as owner for the whole yearly tax and not only for the instalments that accrue due after his acquisition of ownership. It is not compulsory on the Municipality to apportion the tax among the several owners during the period and the provisions of the Transfer of Property Act regarding the obligations of buyer and seller in respect of the payment of taxes do not apply as between the Municipality and the subsequent owner.

S. Aiyer J.

The Chairman of the Municipal Council, Nellore v. Dwarapally Kottamma 30 Mad., 423.

Madras Rent Recovery Act (VIII of 1865.) Ss. 38 and 39—Sale on excessive demand illegal—Institution of civil suit after taking summary proceedings no bar to proceeding with the latter—Limitation Act Art. 12—No bar to defendant in possession pleading invalidity of sale.—Where notice of demand by the landlord under section 39 of the Rent Recovery Act, claims a larger amount than is legally due from the tenant, a sale

under the Act by the landlord for non-compliance with such excessive demand is illegal, and no subsequent alteration of the amount to the proper figure can validate such sale. *Pichuvayengar v. Oliver*, 26 Mad., 261, followed. Where the landlord institutes a civil suit for the rent after taking proceedings under the Act, such proceedings, if pleaded by defendant, will be a valid defence to the suit; but *semble* the mere institution of the suit will not make it illegal to proceed further with the summary proceedings. If the suit is allowed to proceed to judgment, the debt will merge in the decree and further summary proceedings will be illegal, but a sale before judgment will be valid. A defendant in possession whose right to sue to set aside a sale is barred by article 12 of schedule II of the Limitation Act, may set up the invalidity of such sale as a defence.

Benson & Wallis J. J.

Venkatachalapathy Ayyar v. Robert Fischer 30 Mad, 444.

Mahomedan law—*Wakf-shares in a limited Company*—Shares in a limited company cannot be the subject of a valid wakf under the Mahomedan law. *Russel J.*

Bai Fatmabibi v. Gulam Husain 9 Bom. L. R. 1337

Malabar Law—*Otti-holder's right of pre-emption, nature of*—Such right a right of election and not a right to veto—*Right of pre-emption cannot be enforced by counter-claim by otti-holder in transferee's suit for redemption*—*Variation between pleading and proof*—*Plaintiff failing to prove plaintiff mortgage may be given a decree on mortgage admitted by defendant*.—The right of pre-emption which an otti-holder has by custom under Malabar law is only a right to elect whether he will purchase or not and not a right to veto a transfer by the janmi, without his knowledge. The otti-holder's right cannot be pleaded as a bar to a transferee's right to redeem, without an offer to purchase that right. Such an offer by the otti-holder cannot, in this country, be entertained as a counter-claim in a suit by the transferee of the janmi right for redemption, but must be enforced by a separate suit. *Kurri Veerareddi v. Kurri Bapireddi*, (29 Mad., 339), followed. Case law on the otti-holder's right of pre-emption discussed. Where in a suit for redemption, the plaintiff fails to prove the mortgage set up by him, the Court may allow the plaintiff to redeem on the basis of a different mortgage, under which the defendant claims to hold.

White C. J. & Miller J.

Sankaran Mussad v. Molkath Ussain Haji 30 Mad., 388.

Malicious Prosecution—*Civil Procedure Code section II—Jurisdiction of Civil Court—Cause of action—Municipal Committee—Suit against*
—A suit for damages for malicious prosecution is maintainable against a Municipal Committee.
Reid J.

Amar Nath v. Municipal Committee 8 P. L. R., 1907. No. 78

Mamlatdars' Courts Act (Bom. Act III of 1876), sec. 4—*Mamlatdars' Courts Act* (Bom. Act II of 1906), sec. 5—*Mamlatdars' Court—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed Statute*—A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mamlatdar while the Mamlatdars' Courts Act (Bom. Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mamlatdars' Courts Act (Bom. Act II of 1906) had come into operation.

Held, that the Mamlatdar had no jurisdiction to decide the suit.

Per Curiam:—The repealed statute is, with regard to any further operation as if it had never existed.

Regina v. Denton (1852) 18 Q. B. 761, followed and applied.

Russell C. J. & Batty J.

Vajechand v. Nandram 31 Bom. 545

Marriage—*Abatement of suit—Suit for dissolution of marriage—Death of plaintiff-respondent—Damages—Abatement of claim against co-respondent—Held*, that a suit by a husband for dissolution of marriage abates on the death of the respondent, and the dismissal of the suit entails abatement of the claim for damages preferred against the co-respondent—30 L. J. P. and M. 172 followed.
Reid J.

S. v. S & B., 8 P. L. R., 1907 No. 63

Mortgage—*Prior and subsequent mortgagees—Decree for sale in suit by subsequent mortgagee. prior mortgagee not being a party—Prior mortgage binding at sale without mentioning his own incumbrance—Subsequent suit for sale by prior mortgagee—Estoppel*—The plaintiff was a prior mortgagee suing for sale or foreclosure. The principal defendant was a puisne mortgagee. The defendant obtained a decree for sale without making first mortgagee a party to his suit. The property was put up for sale as free from incumbrances: the plaintiff bid at the sale, but made no mention of his own mortgage, and the property was purchased by one R. C. The plaintiff then sued on his mortgage and got a decree for foreclosure, but failed to obtain possession. *Held* that the plaintiff was estopped by his own conduct in bidding at the sale, in execution of the defendant's decree without

disclosing the existence of his own mortgage from disputing R. C's purchase.

Griffin J.

Mauji Ram v. Mohan Singh, A. W. N. 1907, 278

———*Registered document withheld by executant—Delivery of deed not necessary to complete the transaction*—The Divisional Judge dismissed the plaintiff's suit based on a mortgaged deed. on the ground that though the defendants has presented the deed at registration and admitted its execution, they had not *delivered* it to the plaintiff on receiving it back from the registration office, and that the transaction was therefore incomplete. It was found that the defendants had received full consideration and no fraud was committed on them.

Held, that the view of the law taken by the Divisional Judge was erroneous. Delivery of the deed was not legally necessary to complete the transaction.—5 B. & C. 692 followed. *Johnstone & Rattigan J. J.*

Kanshi Ram v. Tota Ram, 8 P. L. R., 1907 No. 78.

———*Mortgage by way of conditional sale—Notice—Demand made before expiry of term of mortgage*—When the necessary demand is made by the mortgagee before the expiry of the stipulated period for redemption, the notice under Section 8 of Regulation XVII of 1806 issued at the instance of the mortgagee is invalid, even if the notice itself was issued after the expiry of the period of redemption. *Reid & Chatterji J. J.*

Sant Singh v. Jiwan Mal 8 P. L. R. 1907. No. 81.

———*Suit for redemption—Practice—Plaintiff suing as sole heir—Death of plaintiff—Abatement of suit*. One Musammat Prabawati, sister of the Respondent Musammat Durga, sued the appellant for redemption of mortgage, executed by the Musammat's father in favour of the appellant on the ground that she, as an unmarried daughter, had obtained the sole right to the property of the father to the exclusion of her married sister to whom along with herself, when a minor, the mortgaged property had, in a previous litigation between the parties interested in the mortgage, been surrendered by the order of the Court, which had held the mortgage debt to have been satisfied. In the present suit Musammat Durga was made a *pro forma* defendant. Musammat Prabhawati having died during the pendency of the suit, Musammat Durga applied to have her name removed from the array of defendants and substituted as plaintiff.

Held that the right claimed by Musamat Prabhawati being a personal right and adverse to that of her sister Musammat Durga, the suit abated after Musammat Prabhawati's death and Musammat Durga could not get her

name substituted as plaintiff and continue the suit.

Stanley C. J. & Burkitt J.

Balak Puri v. Mussammat Durga, 4 A. L. J. 783.

———*Redemption, partial.* One J was second mortgagee of a four annas share of a property and redeemed a first mortgage upon a twelve annas share inclusive of his four annas. A subsequent mortgagee of the eight annas share redeemed the first mortgage upon the whole twelve annas.

Held, that J was entitled to redeem the four annas upon which he had a second mortgage. P. C.

Jawahir Singh v. Baldeo Baksh, 6 C. L. J. 672.

———*Burden of proof—Mortgage bond—Denial of execution and passing of consideration by third party.* If an action to enforce a mortgage security is contested by the mortgagor and execution is admitted by or proved against him, the onus lies upon him to prove that the recitals as to the payment of consideration for the deed which he executed are untrue. When it is contested by a stranger who denies that the bond was executed and also asserts that there was no consideration for the mortgage, the onus is upon the mortgagee to prove his case. *Baranashi v. Brij Lal*, (1899), 3 C. W. N. dissented from. *Brett & Mookerjee J. J.*

Bisheswar v. Harbans, 6 C. L. J. 659.

———*Application for foreclosure—Nature of—Plaint.* An application made, under the Transfer of Property Act, for foreclosure or redemption in accordance with the terms of a decree *nisi* in a foreclosure or redemption suit is a plaint; and the proceeding following upon such application is a 'suit,' (although not the original mortgage suit terminated by the decree *nisi*), within the meaning of those terms in the definition of decree terms in the definition of 'decree' given in S. 2 of the Code of Civil Procedure.

When the *dies datus* in a decree *nisi* has been allowed to pass without payment being made, the creditor is entitled as of right to an order absolute for foreclosure, subject only to an exercise by the Court of an equitable discretion to extend time for payment and redemption upon proper grounds. *Somesh v. Ramkrishna*, 27 Cal. 705 dissented from. *Nand Lal v. Ram Ratan Lodhi*, 2 Nag. L. R. 137 followed.

Laxmibai Narikin v. Ramchandra Malhar, 3 Nag. L. R. 146.

———*Puisne mortgagee obtaining a decree for sale after redeeming a prior usufructuary mortgage, effect of—Whether objection could be raised*

in execution. Where subsequent mortgagee obtains a decree for sale upon his simple mortgage on condition of his redeeming a prior usufructuary mortgage which he redeems and obtains possession, the judgment debtor is not competent to object to the sale on the ground that being in possession of the property as a usufructuary mortgagee he could not sell the property in execution of his simple mortgage. *Bhagwan Das v. Bhawani*, 26 All. 14; *Abdul Qayyam v. Sadr-ul-din*, 25 A. W. N. 11, distinguished. The rule laid down by *Mata Din v. Kasoundhan v. Kazim Husain*, 13 All. 432, should not be extended. Knox J.

Jai Gobind v. Patesri Partab, 4 A. L. J. 764.

———*Purchaser of equity of redemption not made party in mortgage suit—His right against purchaser at mortgage sale—Respective rights—How adjusted—Suit for possession—Limitation—Transfer of Property Act, Ss. 60, 85—Res judicata.* Where a mortgagee in execution of a decree against the owners of the equity of redemption, except one, brings the mortgaged property to sale and purchases it, the owner of the equity of redemption who was omitted from the mortgage suit is not affected by the decree. The proper procedure for the purchaser in such a case to follow is to sue for recovery of possession subject—to the right of the person excluded to redeem him.

Where after such purchase the owner of the equity of redemption who had been excluded brought a suit for recovery of possession against the purchaser at the mortgage sale on the ground that he was not affected by the mortgage decree and the suit was decreed.

Held, that the owner of the equity of redemption cannot resist a suit by the purchaser at the mortgage sale for possession (subject to the right of the defendant to redeem) on the ground that the right of the parties ought to have been adjusted in the previous litigation, when in the previous litigation, he had successfully pleaded that the purchaser at the mortgage sale must enforce his rights by a separate suit. Brett & Mookerjee J. J.

Jugdeo Singh v. Habibulla, 11 C. W. N. 107.

———*T. P. Act Ss. 67, 96, 97—Person holding two mortgages on the same property, the first usufructuary and the second simple, can bring the property to sale in suit on the second mortgage free of the first mortgage.*—A person holding two mortgages on the same property, the first an usufructuary and the second a simple mortgage, can sue under section 67 of the Transfer of Property Act to recover the money on the simple mortgage by bringing the property to sale free of the usufructuary mortgage. The decree in such a case should direct the property to be sold and

the sale-proceeds to be applied first in discharge of the usufructuary mortgage and the balance in discharging the second mortgage. The fact that no suit for sale could be brought on the usufructuary mortgage will be no bar to such mortgage being paid out of proceeds derived by the sale of the property on another mortgage. *Govinda Bhatta v Narain Bhatta*, 29 Mad., 424, followed in principle. *Bhagwan Doss v. Bhawani*, 26 All., 14, not followed. Sections 96 and 97 of the Transfer of Property Act do not in terms exclude usufructuary mortgages and their provisions may be applied to such mortgages.

Boddam & Miller J. J.

Rengasami Nadan v. Subbaraya Iyer 30 Mad., 408.

———*Transfer of Property Act, ss. 88, 89—Mortgage decree under s. 88 cannot impose personal liability for costs—Such liability should be enforced under s. 90*—It will be contrary to the scheme of the Transfer of Property Act and to the practice of the English Courts of Equity to make a mortgagor personally liable for costs in any case before the sale-proceeds have proved insufficient to satisfy the mortgage claim. A decree under section 88 of the Transfer of Property Act must not order the defendants personally to pay the costs. It may contain a declaration of the personal liability of defendant for principal or costs, but such a declaration is not a part of the usual form of decree under the Transfer of Property Act and is enforceable only under section 90. The word 'the amount due on the mortgage for the time being' in section 90 must be taken to include costs.

Benson & Wallis J. J.

Kamamma v. Komandur Narasinha Charlu, 30 Mad., 469 = 2 M L.T. 359

———*Transfer of Property sec. 91—Permanent lease holder right to redeem—Terms of the lease*—Where the plaintiff was put in possession of land as a permanent lease holder in consideration of a premium to be paid yearly and could do with the land what he liked, he liked, held that he was not a mere tenant, or an ordinary lessee but had such an interest in the land as was sufficient to entitle him redeem a prior mortgage. *Griffin J.*

Raghubandan v. Ambika 6 C. L. J. 703

———*T. P. Act Ss. 92 and 94—Redemption—Subsequent suit for profits received by mortgagee barred*.—In a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagor and mortgagee right up to the time of actual redemption or sale, as the case may be. A mortgagor therefore who has obtained a decree for redemption and paid in what was found by the decree to be due from him cannot subsequently sue for profits realized by the mortgagee in possession, which might and

ought to have been taken into account at the time of passing the decree.
Richards J.

Kashi Prasad v. Bajrang Prasad, A. W. N., 1907, 281.

——— *Hindu law—joint family—Mortgage by a manager—Sale by a mortgagee of mortgaged property in execution of money—Decree prohibited—Transfer of Property Act—sec. 99—Mortgagee's possession not adverse—Minor not bound by sale—* Sec. 90 of the Transfer of Property Act prohibits a sale of mortgaged property held in contravention of the provisions of the section. *Jadubhai v. Kuli Kunar* 30 Cal 463, and *Mahabir v. Saiya Bibi* 17 All 522 followed

In a joint Hindu family governed by the Mitakshara a son is not deprived of his equity of redemption by virtue of a sale prohibited by law. *Matthuraman v. Ettepasami* 22 Mad., 372 followed. *Martand Balkishna v. Dhondur Damodar* 22 Bom. 624 applied in principle.

A suit for redemption is not barred merely by reason of silence or acquiescence on the part of the mortgagor unless there is a release of the equity of redemption. *Khairaz v. Dain* 32 Cal. 226 followed. The only modes in which a mortgagee can extinguish the right of redemption are either by getting the mortgagor to execute a release of equity of redemption in his favour, or by a proper suit under the Transfer of Property Act. A mortgagee by erroneously representing himself as owner of the mortgaged premises can not make his possession adverse to the true owners.

Dillon J.

Jhabba Kal v. Chhajju Mal 4 A. L. J. 787

Negotiable Instrument Act (XXVI of 1881.) Ss. 8, 78.—*Right of indorser endorsing for collection—Indorser on regaining possession of bill, may strike out name of indorsee and himself sue on the bill.* The holder of a negotiable instrument within the meaning of section 8 of the Negotiable Instrument Act, to whom payment must be made under section 78 of the Act, is the person who on the face of such instrument is entitled in his own name to the possession thereof and to receive or recover the amount due therefor from the parties thereto. *Subba Narayana Vathia v. Ramaswamy Iyer*, 30 Mad. 93 referred to. Where the drawer or indorser takes up a bill by paying the holder, he is entitled to strike out subsequent parties and maintain a suit on such bill against the parties antecedent to himself. Where a bill is indorsed for collection and is returned by the indorsee to the indorser, the former ceases to be the holder within the meaning of section 8 of the Act, and the latter can maintain a suit on the bill by

striking out the name of the indorsee. English and American cases on the subject considered.

Benson & Wallis J. J.

Subramania Chetty v. Alagappa Chetty, 30 Mad. 441.

N. W. P. Land Revenue Act (XIX of 1873, Ss.) 294 (g) and 203.
-Act (Local) No. III of 1899 (Court of Wards Act) Ss. 9, 35 and 47—
Power of Court of Wards to sell property under its superintendence. The estate of a Muhammadan lady, named Hawa Begom, was at her own request taken under the superintendence of the Court of Wards under section 194, clause (g), of Act No. XIX of 1873. This was in 1896. In 1902 the Court of Wards sold a portion of Hawa Begam's property, as was alleged, without her consent. *Held* on suit by persons claiming title through Hawa Begam to recover the property so sold, that the Court of Wards was under the circumstance entitled to sell, even without the owner's consent and that its discretion could not be questioned in any Civil Court.

Seemle, that if the property had been placed under the superintendence of the Court of Wards, under section 9 of Local Act No. III of 1899, and if the sale had been made without the consent of the proprietor, otherwise than on the ground set out in the concluding paragraph of section 35, the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell.

Know & Richards J. J.

Mohsan Shah v. Mahbub Ilahi, 29 All 589.

Oath—Agreement to be bound by—When avoidable—It is not open to parties to resile from an agreement to be bound by an oath of the other party, if there has been a complete proposal and acceptance except for some good reason.

Benson & Sankaran Nair J. J.

Velayuda v. Narainsami 17 M. L. J. 536

Partition—Suit for—Right of a putnidar of a small share of an estate to claim partition—In the absence of proof of inconvenience to other co-sharers, a putnidar whose right extends over only a fractional share of one of mauzahs in the zamindari, is entitled to maintain a suit for partition.

Stephen & Holmood J. J.

Umo Sundari Debi v. Benode Lal Pakrashi, 34 Calc. 1026

Practice—Appellate Court—Taking notice of events happening after the order—Appealed against—It is not only competent to a Court of appeal but it may do its duty under the certain circumstances, to take notice of events which have happened since the order challenged in appeal was made.

Mookerjee & Caspersz J. J.

Udit v. Rashika, 6 C. L. J. 662

—————*Court's process, abuse of—Wrong done by order of Court—Court's inherent power to rectify—Events happening after the filing of appeal—*When an order has been improperly or fraudulently obtained from a Court, as soon as the Court is apprised of the fact, it will recall the order on the ground that no Court will tolerate an abuse of its process. The Court has inherent power to do so.

When there has been a wrongdone by an order of Court which has been set aside on appeal the Court executing the decree without express authority of law is competent to put the parties in the position which they occupied before that order.

Mookerjee & Caspersz J. J.

Udit v. Rashiku 6 C. L. J. 662

—————*Statement not contradicted in written statement—*A fact alleged in the plaint and not expressly denied by the defendant is taken to have been admitted by the latter and there is no necessity for the former to prove it.

Rattigan & Shahdin J. J.

Gurditta Mall v. Goolam Ali 2 P. W. R. 275

*Pre-Emption—Price stated in sale-deed alleged to be fictitious—Burden of proof—*When a plaintiff pre-emptor comes into Court alleging that the price entered in the sale-deed is fictitious, it rests on him to give some *prima facie* evidence that this is the case. But comparatively slight evidence is sufficient for such purpose, and it will then be for the parties to the sale to show that the price alleged to have been paid was actually paid. *Conor v. Ghulam Haidar*, 28 All, 617 not followed.

Aikman & Griffin J. J.

Abdul Majid v. Amolak, 29 All 618.

—————*Wajib-ul-arz—Construction of document—Custom or contract—*The zamindars of a village in the district of Saharanpur, in a *wajib-ul-arz* attested on the 8th November 1861, declared they would "be bound by and act upon the undermentioned conditions" for thirty years, until the completion of the next settlement. Amongst the "undermentioned conditions" were certain conditions relating to the right of pre-emption. A fresh settlement was commenced in 1890, and in the *wajib-ul-arz* prepared at that settlement it was provided that "as to the remaining customs in the village the record of rights prepared at the former settlement is to be looked at."

Held that the earlier *wajib-ul-arz* recorded, not a custom, but a contract, which came to an end with the term of the settlement, and the later *wajib-ul-arz* could not be construed as the record of a custom after the

lapse of only thirty years: there was therefore no right of pre-emption in the village.

Stanley C. J. & Burkitt J.

Maraṭib Husain v. Alam Ali, A. W. N., 1907, 285.

——— *Wajib-ul-arz—Construction of document—Rights of ex-proprietor in houses.*—When the wajib-ul-arz provided that an ex-proprietor was entitled to sell the materials of his house, it was held that this by implication meant that he could not transfer any right to live in the house or the site of it.

Griffin J.

Jamna Prasad v. Pannalal, A. W. N., 1907, 287.—4 A. L. J. 754.

——— *House—Shops—Business done in residential buildings.*—Where the custom of pre-emption prevails in respect of residential buildings, it must be held to be applicable to properties which are in form residential though portions of them are used for business purposes.

Kensington & Chitty J. J.

Nawal Kishore v. Amir Kdan, 8 P. L. R., 1907. No. 80.

——— *Wajib-ub-urz—Owner of resumed muafi holding—Whether co-sharer.*—Where the wazib-ul-arz of a village provided that “minjula malikanke agar koi hissadar apni haggiat bai karne chate to awal hissadar sharik &c. &c.,” and was to be applicable to zamindars only held, that the owner of resumed muafi land in the village is not a co-sharer within its meaning.

Griffin J.

Munnalal v. Narain Prasad, 4 A. L. J. 665

——— *Punjab re-emption Act (II of 1905)—Applicability of Regulation XVII of 1806—Conditional sale of agricultural land.*—Held that the Punjab Pre-emption Act does not confer right of pre-emption with respect to conditional sales of agricultural land.

Reid J.

Ram Prashad v. Hira 8 P. L. R., 1907 No. 65.

——— *Wajib-ul-arz—sale—Whether includes an exchange—Re-transfer to vendor's widows—Cause of action.* Where a wajib-ul-arz provided a right of pre-emption in case of a sale and further that if there was a dispute in the price, it was to be settled by means of panchait, held that the words were wide enough and included a transfer by way of exchange. *Niamat Ali v. Asmat Bibi*, 7 All. 626 referred to.

Where the vendor died after the transfer leaving an adopted son, but before the suit for pre-emption was brought, the property was re-transferred to his widows, who were not made parties to the suit, held that the pre-

emptor had a good cause of action to main the suit.

Knox Ag. C. J. & Richards J.

Bhagwan Singh & Kharag Singh, 4 A. L. J. 756 = A.W.N., 1907, 280.

Principal and Agent.—*Suit for money advanced to agent for benefit of principal—Authority of agent—Civil Procedure Code—extent of Contract Act, S. 181—Powers of attorney, construction of—interest on loan.* Where A does an act as agent for B without any communication with C, C cannot by afterwards adopting that act, make A his agent and thereby incur any liability or take any benefit under the act of A. *Wilson v. Tumman* (1843) 6 M. & G. 236, 64 R. R. 770 and *Keighby v. Durant* (1901) A. C. 240. referred to

An agent authorised to obtain an extension of time and postponement of an intended judicial sale has, within the meaning of S. 188 of the Indian Contract Act, authority to do every lawful thing which is necessary in order to do the act which he is expressly authorised to do.

Brett & Mookerjee J. J.

Ghasiram v. Raja Mohan, 6 C. L. J. 639.

Probate.—*Revocation of—Practice—Succession Act, S. 234.* The respondents applied on the 28th March 1906 for probate of the will of James M. De Roche to be granted to him. Citations were issued to the appellants, who opposed the grant, on the grounds, (a) that the will had not been duly executed by James De Roche; (b) that when he was said to have executed the will, he was, by reason of sickness, unconscious of what he was doing and incapable of understanding and of speech. The issues framed were (x) was the will executed by the deceased? (y) if so, was the execution valid? The case was set down for hearing and was dealt with as a contentions matter under S. 261 of the Act. (1) The District Judge found that the will had been executed by James De Roche and that the execution was valid and ordered probate to be granted to the respondent, and accordingly probate was issued to him. Four days afterwards appellants presented an application for review of judgment on the ground that they had discovered fresh evidence, which, if taken, would throw a different aspect on the merits of the case. This application was rejected. Then the suit, which was allowed to be amended to an application under S. 234 of the Succession Act was brought. It purported to be a suit to revoke the probate on the ground that will had been obtained by undue influence exercised over the testator by the respondent. This ground was not set up at the hearing of the application for probate, but the facts, on which it was based, were the same as those on which the application for a review of judgment was made,

and the just cause relied upon as ground for revoking the probate was that it had been obtained by concealing these facts, which were said to be material to the case.

Held that the Indian Legislature has provided a remedy for such a case in S. 234 of the Succession Act (1) and that as the Legislature has not fettered the right of applying for revocation of probate in any way, the Courts are not at liberty to put any fetters on such right by applying to it a rule adopted in the English Courts (viz. that when once probate in solemn form has been granted, no one who has been cited, or has taken part in the proceedings, or who was cognizant of them, can afterwards seek to have it cancelled), or S. 13 of the C. P. Code.

In the matter of the will of *Pitamber Girdhar*, 5 Bom. 638; *Komalluchun Dutt v. Nibittun Mundle*, 4 Cal. 360; *Briuda Chowdrain v. Rudhica Chowdrain*, 11 Cal. 492; *Nistariney Debia v. Brahmomoyi Debia*, 18 Cal. 45, distinguished.

Fox C. J. & Moore J.

Cecilia King v. Arthur, 13 Pur. L. R. 325.

Probate and Administration Act (V of 1881), S. 50.—*Citation on minor—Minor represented by applicant as guardian—Proceeding defective—Revocation, application for—Applicant acting in concert with another.* Where an applicant for probate of a will took out citation upon a minor who was represented by the applicant herself as guardian.

Held, that the proceedings to obtain the grant were defective in substance and the grant should be revoked. The fact that the petitioner for revocation of probate was acting in concert with somebody else could not take away the right which she otherwise possessed of applying for revocation.

Ghose C. J. & Caspersz J.

Shoroshibala v. Anandamoyee, 12 C. W. N. 6.

Promissory note.—*Suit on—Onus of proving non-receipt of consideration—Interest.* In the case of a Promissory Note, the onus of proving non-receipt of full consideration and payment of interest thereon lies on the promisor (b) a contract of paying interest at the rate of Rs. 36 per cent per annum entered therein is enforceable by law and the rate cannot be reduced simply on the ground of its being exorbitant, and (c) that further interest at 12 per cent per annum can be allowed on the amount decreed and costs from the date of the suit to the date of realisation.

Rattigan & Shahdin J. J.

Gurditta Mal v. Gulam Ali, 2 P. W. R. 275.

Railways Act (IX of 1890)s 67—*Benefit of section not waived by Railway Company when they grant reserved accommodation under the rules—*

The provision in section 67 of the Indian Railways Act that "fares shall be deemed to be accepted and tickets deemed to be issued subject to the condition of there being room available in the train for which the tickets are issued" is introduced for the benefit of the Railway Companies and can be waived by them. One of the rules under which reserved accommodation is granted is, 'Reserved carriages in mail trains can be provided when the load of the train permits.' In granting reserved accommodation on the terms embodied in the rules, the company does not contract itself out of the benefit conferred by section 67, and is not liable in damages for refusing to attach a reserved carriage to a mail train already fully loaded.

Benson & Wallis J. J.

Surayanarayana-murti v. The Madras Railway Company, 30 Mad. 417

———**Sec. 77, 140—Refund of an overcharge—Notice—Letter—Manner of service—Statement of fact not a proof of fact.**—Plaintiffs, who were merchants residing at Poona, entered into an agreement with the G. I. P. Railway Company that the latter should deliver consignments of goods despatched from Wadi at Poona at a certain rate. Several consignments were accordingly delivered by the Railway Company at Poona and they were paid for according to the agreed rate. At the time of the delivery of the last consignments, the Railway company refused to deliver it unless all the consignments including those already delivered and paid for, were paid for at a higher rate. The plaintiffs thereupon paid the higher rate under protest and sued the Railway Company in the Court of Small Causes at Poona for the recovery of the overcharges claimed and received by the defendant. The defendant contended that the suit was not maintainable inasmuch as no notice of the claim was served by the plaintiffs according to section 77 of the Indian Railways Act. The Judge overruled the defendant's contention and allowed the claim holding that a notice under section 77 of the Act was not necessary because the section contemplated overcharges recovered before the delivery of the goods to the consignee and not to overcharges recovered after the delivery as was the present case. He further held that if notice was necessary, it was given by the plaintiff inasmuch as there was an allegation that a notice had been sent in a letter addressed to the Agent of the Company, care of the Station Master, Poona, by the plaintiffs.

The defendant having applied under revisional jurisdiction,

Held, that notice was necessary. The overcharge referred to in the section is not confined in its meaning to an overcharge recovered before the delivery of the goods to the consignee at their destination.

Held further, that the delivery of a letter under section 140 of the Act must be in exact compliance with the terms of the section and it must be delivered to the Agent at his office.

The statement of a fact in a letter is no proof of the fact itself.

Russel C. J. & Batty. J.

G. I. P. Railway Company v Dewasi 31 Bom, 534.

Record of rights—Entry in effect of—Possession, suit for—Limitation—The only effect which can be attributed to an entry in the Record of rights is that it is to be presumed correct till the contrary is proved. The Bengal Tenancy Act does not lay down that the entry is to be taken as conclusive upon the question of title till a contrary decision has been given by the Civil Court. Hence the plaintiff is not bound to bring a suit for possession within one year from the date of which the entry of defendant's name was made in the Record of rights. *Ram Gulam v. Bishnu* 11 C. W. N. 48 and *Agni Bindh v. Mohan* 30 Calc. 20 referred to. *Malkarjun v. Narhari* 25 Bom. 337 = L. R. 27 I. A. 215 explained.

Mooke j c & Casperes J. J.

Ramsahawan v. Bachu Misser 6 C L. J. 670

Registration Act—17 sec. (d)—Petition of compromise containing a recital of a previous oral agreement for lease—Stamp-registration-evidence—Where a petition of compromise merely contained a recital of a previous oral agreement for lease. *Held*; that it did not require registration or stamp. It was evidence of an oral agreement but not an agreement itself.

Rampini C. J. & Sharfudin J.

Pitamber Jain v. Mondal 12 C. W. N. 50

Religious Endowments Act (No. XX of 1863), ss. 14 and 20—Suit claiming superior right to management of endowment—Parties—Leave to institute suit—Held, that no suit would lie against the manager appointed by a committee constituted under the provisions of Act No. XX of 1863, upon the ground merely that the plaintiff was more eligible than the defendant, especially when the committee of management were not made parties to the suit; and no such suit could be maintained in the absence of the sanction for its institution required by section 20 of the Act.

Stanley C. J. & Burkitt J.

Tajammul Husain v. Fazal Rasul A. W. N., 1907, 237 = 4 A. L. J. 774

Restitution of Congugal rights—Hindu Law—Husband and wife—Cruelty—Matrimonial offence—Safety of wife in peril—Per Harington

J. It would not be safe that whatever is a defence to an action for restitution of conjugal rights in the case of a European would also be in every case a defence in the case of a Hindu; but the Court is not bound, in the case of Europeans and Indian, alike, to order a wife to return to her husband if there is reasonable ground for apprehending that a return to that husband will imperil her safety. *Per Mookerjee J.* The conduct of a Hindu husband who brings a low caste woman as his mistress in the house to live with him as a member of the family, and expels his wife and son from the family and residence, amounts to cruelty within the meaning of the law, which justifies wife to leave separate from her husband and deprives the husband of his right to a decree for restitution of conjugal rights. The husband would not be entitled to succeed even if this conduct did not amount to cruelty but constituted a grave matrimonial offence.

Dular Koer v. Dwarka Nath Missir 34 Calc. 971

Res Judicata—*Suit to set aside a decree on the ground of fraud—Sole question raised in the suit already decided in proceedings under section 108 of the Code of Civil Procedure*—In a suit to set aside a decree as having been obtained against the plaintiff by fraud substantially the only ground relied upon was that the suit had been improperly instituted against the plaintiff as of full age when in fact he was minor. This had been decided against the plaintiff in earlier proceedings between the parties under section 108 of the Code of Civil Procedure. *Held* that the suit was not maintainable. *Puran Chand v. Sheodat Rai*, 29 All, 212 followed. *Khagendra Nath Mahata v. Pran Nath Roy*, 29 Calc, 395, distinguished.

Banerji & Aikman J. J.

Niadar Mal v. Raunak Husain, 29 All 608=4 A. F. J. 668

———*Decision in previous suit binding as res judicata between the co-defendants if the matter in the subsequent suit actively contested at previous trial*—A decision in a previous suit on a matter raised and actively contested between co-defendants in such suit will operate as *res judicata* in a subsequent suit in which such co-defendants are arranged as plaintiff and defendant. *Kandiyil Cheriya Chandu v. The Zamorin of Calicut*, 29 Mad., 515 followed. The fact that the defendant in the previous suit had no right of appealing against the decision because the suit was dismissed, will not affect the operation of the bar, when such defendant having the right to be joined as a plaintiff chose to contest the suit as a co-defendant.

The Full Bench decision in *Somasundra Mudali v Kulandai Veliru Pillai* 28 Mad., 557 is not in conflict with *Kandiyil Cheriya Chandu v.*

The Zamorin of Calicut 29 Mad., 511), Where a decision dismissing a suit is in fact wholly against the defendant, such defendant can appeal against it.

Benson & Miller J. J.

Yusuf Sahib v. Dargi, 30 Mad. 447.

Revision—Practice—Interference of High Court. The ordinary rule is that where an aggrieved party has other remedy available e.g. by regular suit, the High Court is unwilling to interfere in revision; but even if there be such remedy the High Court may interfere in exceptional cases.

Brett & Mookerjee J. J.

Niatul Mehdi v. Kulsoon, 12 C. W. N. 16.

Specific Relief Act, S. 21.—Arbitration—Contract containing condition as to referring disputes to arbitration. Before S. 21 of the Specific Relief Act can be relied on as a bar to a suit on a contract containing a condition that disputes arising under the contract will be referred to arbitration, there must be a refusal by the plaintiff to refer. The mere filing of the suit is not such a refusal as is contemplated by the section. *Chitty J.*

Ralli v. Waliati Ram, 8. P. L. R. 1907, No. 70.

Stamp Act S. 35—Promissory note not duly stamped—Suit on oral agreement contained in promissory note—Evidence—Admission oral evidence as to contents of document—The plaintiff sued for recovery of money on a book-account and alleged that the defendant had executed a promote in favour of plaintiff for the amount due, but as the pronote was not duly stamped, the plaintiff claimed to put in the book-account. The defendant admitted, having executed the pronote but contended that it was admissible in evidence for want of proper stamp, and that the suit on book-account was not maintainable and was barred by limitation.

Held, that the contentions were valid, and the admission of execution of the pro-note by the defendant was not sufficient for the claim to be decreed.—

Johnstone & Rattigan J. J.

Ganga Ram v. Amir chand 8 P. L. R. No. 83.

———**S. 35—No. secondary evidence admissible the receiving which will be to give some effect to an unstamped document—**In a suit by plaintiffs to redeem lands alleged to have been mortgaged under an instrument in 1841, the document was not produced and therefore secondary evidence was not receivable to prove the contents of the document and the passing of possession under the deed as showing that the defendant by such possession acquired only a mortgagee's right in the

property:—*Held*, that the receiving of such evidence will be to give some effect to the unstamped document by connecting the possession with the contents thereof, and was therefore contrary to the provisions of section 35 of the Indian Stamp Act. An admission of the mortgage by the defendants' ancestor was also held not receivable on the same grounds.

S. Aiyer & Miller J. J.

Thaji Beebi v. Tirumalaiappa Pillai 30 Mad, 386.

Succession Certificate Act, (Act VII of 1889)—*Successor to impartible zamindari not entitled to recover debts due to his predecessor without a certificate under the Act.*—The successor to an impartible estate is not a co-owner with his predecessor in the moneys due to the latter before his death. He derives his title to such debts only at the death of his predecessor, as part of such predecessor's effects and cannot recover them without obtaining a certificate under Act VII of 1889. The rule of succession in impartible estates is based on a theoretical coparcenary and not on any actual unity of interest between the predecessor and his successor, and this theoretical community of interest can be applied only for the purpose of determining the succession and for no other purpose whatsoever. *Kali Krishna Sarkar v. Raghunath Deb*, 31 Calc. 224, not followed.

Benson & Miller J. J.

Rajah of Kalahasti v. Achigadu 30 Mad, 454.

Suit—Maintainability of—Right to man-pan. No suit lies merely to establish a right to the dignities and persquisites known in Berar as man pan.

Shiwaji v. Mahadev, 3 Nag. L. R. 131.

Surety—Principal and surety—Suit to recover debt from surety—Admission by principal no evidence of amount of debt as against the surety—*Held* that in suit by a creditor to recover the amount of his debt from a person who had become surety for the debtor an admission of the principal debtor as to the amount of the debt is not evidence as against the surety. *Ex parte Young* (L. R., 17 Ch. D., 668) followed.

Aikman J.

RamBhajanlal v. Sheo Prasad, A. W. N. 1907, 293.

Transfer of Property Act, s. 6 (d)—*Property restricted in its enjoyment to the owner personally—Jajmani bahis.*—*Held* that "jajmani bahis" are not property the sale of which in execution of a decree is, obnoxious to the provisions of section 6 (d) of the Transfer of Property Act, 1882; but the sale of such books will not carry with it the right to act as the hereditary guide of the pilgrims whose names are therein recorded.

Banerji & Aikman J. J.

GopiNath v. Jhandu, A. W. N., 1907, 282.

—**Ss. 10, 12 and 126—Construction of document—Gift subject to a power of revocation**—In 1859 the predecessors in title of the plaintiffs sold their share in the village zamindari to the predecessors in title of certain of the defendants. The vendees then made over to the vendors 5 bighas of land together with trees to be held by them and their heirs for maintenance, subject to the condition that the land would be liable to be taken back in the event of the donees transferring it. *Add*, that this was a valid condition, not repugnant to the original transfer, and the donees had no right to a decree declaring that they were proprietors of the land.

Bannerji & Aikman J. J.

Thakur Prasad v. Rajrup Singh, A. W. N., 1907, 278. = 4 A. L. J. 704.

—**Ss. 53—Fraud on creditors—Transferee, rights of—"Good faith" Sale by debtor with intent to defeat or delay creditor—Fraudulent intent of vendor shared in by purchaser—Fraudulent Preference—Sale in consideration of existing debt—Sale of entire estate of debtor—Frame of suit—Appeal.**—A suit under section 53 of the Transfer of Property Act to obtain a declaration that a conveyance is voidable at the instance of the creditors of the transferor must be brought by or on behalf of all the creditors, and the suit unless so framed would not be maintainable. But the suit cannot be dismissed on this ground, if the objection is taken for the first time in appeal. In order to establish the validity of a conveyance impeached as a fraud upon creditors, consideration and good faith must both be proved. If the transfer is for valuable consideration and is made with a full intention that the property should be parted with, and not as a cloak for retaining a benefit to the grantor, it will be valid as against a creditor, though the object of the transferor may have been to defeat an impending execution. Where, however, a transfer, although for valuable consideration and intended to pass the absolute title in the property, is made with the object of defeating or delaying the grantor's creditors, and such object is known to the transferee who aids and assists in executing it, the transfer cannot be regarded as one made in good faith. In the absence of a law of Bankruptcy, a preferential transfer of property to one creditor in satisfaction of an existing debt due to him is not fraudulent as to other creditors, although the debtor in making the transfer intended to defeat the claims, and the transferee had knowledge of such intention, if the only purpose of the latter is to secure his own debt and the property is not worth materially more than the amount of his debt. It makes no difference that the transfer is of the whole of the estate of the debtor.

Isan Chunder Das Sankar v. Bishu Sirdar, 24 Calc. 825, approved.

Mookerji & Holmwood J. J

Hakimlal v. Mooshakar Sahu 34 Calc. 999

———**S. 108 (j)**—*Assignee of lease, liability of, to lessor—Liable for rent from date of assignment and not from date of obtaining possession—principle applies to agricultural lease.* Under section 108 of the Transfer of Property Act a lessee may transfer his privity of estate to an assignee, thus rendering the latter liable to the lessor on covenants running with the land, while he himself will continue liable to the lessor by reason of his privity of contract which does not pass by assignment. The liability of the assignee arises from the date of assignment and not from the date when he obtains possession. This is the law in England and there is nothing in the Transfer of Property Act to make a different rule applicable in this country. Although the Transfer of Property Act does not apply to agricultural leases, there is no reason why the above rule should not be applied to them as well as to non-agricultural leases. The assignee of an agricultural lease becomes liable for the rent payable to the lessor from the date of assignment. *Kamala Nayak v. Ranga Rao*, (I. M. H. C. R., 24), dissented from. *Macnaghten v. Lalla Mewa Lall*, (3 Cal. L. R. 285), dissented from. *Benson & Wallis J. J.*

Monica Kitheria Saldanha v. Subraya Hebbara 30 Mad. 410.

United Provinces Land Revenue Act, Ss. 110, 111, 233 (k)—*Partition—Objections not raised before Revenue Court—Suit in Civil Court for declaration of title—Jurisdiction.* On the 12th March 1904 defendants applied to the Revenue Court for partition of their share in two Mahals. Proclamation was issued on that application calling upon the opposite party to appear on the 18th of April 1904 and state their objections, if any, to the partition. The opposite party did not appear in the Revenue Court, but on the 20th of April 1904 instituted a suit in a Civil Court against the applicants for partition asking for a declaration of their exclusive possession over part of the property, the subject matter of the defendants' application for partition in the Revenue Court. *Held* that the plaintiffs' suit was not maintainable. *Bannerji & Aikman J. J.*

Nathi Mal v. Tej Singh, 29 All. 604.

———**S. 144, 84 (b)**—*Suit by co-charers against lambardar—Lambardar entitled to 5 p. c. on the revenue—Agra Tenancy Act (II of 1901 Local) s. 159 "other duties"—set off—In a suit for profits by co-sharers against a lambardar, the latter shall be remunerated by fees not exceeding 6 per cent. on the Government revenue, and he is also entitled to the village penses incurred by him.*

The expression "other dues" in sec. 159 of the Tenancy Act includes lambardari dues. *Griffin J.*

Pokhar Singh v. Gulab 4 A. L. J. 781

Valuation of suit—Mortgage by way of conditional sale—Suit for possession of land, assessed to land-revenue, after foreclosure of mortgage—The value of a suit for purposes of jurisdiction by a mortgagee for possession of mortgaged land, assessed with revenue as owner after foreclosure of the mortgage is thirty times *jama* and not the market value of the land. *Johnstone & Rattigan J. J.*

Vir Singh v. Sarmukh Singh 8 P. L. R. 1907 No. 66.

THE LAWYER.

1st FEBRUARY 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL).

Agra Tenancy Act, Ss. 32—United Provinces Land Revenue Act, Ss. 40 and 44—Suit for ejectment of trespasser—Civil and Revenue Courts—Jurisdiction—The plaintiff sued to eject the defendant from an occupancy holding alleging that, whereas the defendant was the tenant of a small portion of the holding, he had in collusion with the patwari procured the entry of his name in the revenue papers in respect of the entire holding and had dispossessed the plaintiff therefrom. *Held* that the suit was not a suit for the division of profits within the meaning of section 32 of the Agra Tenancy Act, 1901. *Achhelal v. Janki Prasad* (Weekly Notes, 1906, p. 274) distinguished. *Held* also that the fact that the defendant had got his name recorded in the annual registers in respect of the entire holding was no bar to the maintenance of the plaintiff's suit in a Civil Court.

Bannerji J.

Ajudhia Singh v. RamDayal Upadhia, A. W. N. 1908, 3.

———(II of 1901) sec. 32—*Division of tenancy—abatement death of pro forma defendant*—Plaintiff's claimed a half share in an occupancy holding and prayed for possession of that share or such other relief as the Court might think fit to grant. The Court below passed a decree for possession of the share claimed.

Held, that this was substantially a decree for division of the holding and was opposed to sec. 32 of the Tenancy Act. The plaintiffs were, however, entitled to a declaration of right to one-half of the holding.

Bannerji & Aikman J. J.

Ashiq v. Asghari 4 A. L. J. 809.

———Ss. 201—*Evidence, Act s. 4—Evidence—Presumption—Record of plaintiff's name as a co-sharer.*—*Held* that the presumption

enjoined by section 201, clause (3) of the Agra Tenancy Act, 1901, is not conclusive, but may be rebutted by evidence offered to the contrary.

Stanley C. J. & Burkitt J. J.

Dhanka v. Umrao Singh, A. W. N., 1907, 292 = 4 A. L. J. 802.

Appeal—Parties—Estoppel—Procedure—The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal, with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit. *Farzand Ali Khan v. Bismillah Begam* I. 27 All., 23 followed.

Bannerji & Aikman J. J.

Lohre v. Deo Hans, A. W. N. 1908, 4.

Aliasantana family—Decree against the Manager—How far binding—Civil Procedure Code s. 13—Resjudicator between co-defendants—One Y obtained an exparte money decree against I. as Yejman of an Aliasantana family. I. then frild a suit for a declaration against the other members of his family that certain debts incurred by him including the debt due to Y under the exparte decree were binding on the family, making Y and other creditors parties (defendants) and the suit was dismissed with costs. Y then in execution of his exparte decree attached the immoveable property of the family, the members of which filed a suit for declaration (on their petition under sec 279 C. P. C. being dismissed,) that the attached property is not liable to be sold.

Held, that the junior members of an Alyasantana family can impeach a decree against the manager by showing that he did not represent the family when the debt was incurred.

2. The members should raise their contention under sec. 244 and not under 279 C. P. Code; it should not be allowed to be raised on the hearing of the second Appeal for the first time.

3. That Y was bound by the finding in the suit brought by I against the members of his family to which Y and other creditors were parties. *Kandivil Cherya Chandu v. The Zamorin of Calicut* 29. M. 515 followed.

4. That Y could have appealed against the decree in the previous suit. *Krishna v. Mahesh* 9 C. W. N. 584 followed, and that even if he had no right of appeal he would have been bound as he could have been made a plaintiff in that suit. *Mathukumarappa v. Arnuga*. 7 M. 149 distinguished.

Benson & Miller J. J.

Fisuef v. Durg 2 M. L. T. 368.

Bengal Civil Courts Act No. XIII of 1887 S. 37—Muhammadian law—Evidence not admissible to prove custom at variance with the Muhammadan law.—Where the parties to a suit are Muhammadans, governed with regard to the matters mentioned in section 37 of Act No. XIII of 1887, by the ordinary rules of the Muhammadan law, evidence is not admissible to prove a custom of succession at variance with that law. *Amiya v. Diwan* (23 All., 20) and *Surmust Khan v. Kadir Dad Khan* (1 Agra F. B. R., 38) followed. So held, the parties being Mochi Muhammadans. *Stanely C. J. & Burkitt J.*

Ismail Khan v. Imtiaz-un-nissa, A. W. N., 1908, 7.

Bengal Municipal Act Ss. 34–37—Contract in violation of the Bengal Municipal Act—Commissioner, power of, under Bengal Municipal Act—Ultra vires—Fraud, Section 34 of the Bengal Municipal Act must be read along with S. 37 of the said Act. Where in a suit by the Chairman of the Municipality to set aside a permanent lease executed by the Commissioners at a meeting and that it involved a value exceeding Rs. 500, but that the *kabuliyat* executed on behalf of the Municipality was signed only by the Chairman, and although two of the Commissioners witnessed it they did not sign it as contracting parties, and, furthermore, it was not sealed with the seal of the Commissioners:—

Held, that the contract was not binding on the Commissioners.

Rampini Ag. C. J. & Sharfudin J.

Chairman, South Barrackpore Municipality v. Amulya Nath Chatterjee
4 Cal. 1030 = 12 C. W. N. 50.

Bengal Tenancy Act (VIII of 1885) Ss. 16, 18, 79, 179.—Mokarari—Meaning of—Abwab—Rent. The word “mokarari” means “with fixed rent” that is to say, when applied to a tenure, it means a tenure held at a fixed and permanent rate of rent.

Held, upon a construction of the lease in this case that it was not a mokarari lease and that the stipulation in the lease for payment of Rs 3 instead of delivery of two goats was an abwab and that the case did not fall within the protection of Section 179 of the Bengal Tenancy Act.

Maclean C. J. & Geint J.

Gayratulla Sardar v. Girish Chandra, 12 C. W. N. 175.

—Ss. 105, 106, 108.—**Record-of-rights—Entries as to character of holding and status of tenant—Correction of entries—Proper procedure.** Before the passing of Act, of 1907, an entry in a finally published record-of-rights that lands held by tenants were *mal* lands or that the status of the tenants was that of settled raiyats, could not be corrected

by the Settlement Officer except in a suit instituted under S. 106, Bengal Tenancy Act. He had no authority to revise such an entry under S. 108 of the Tenancy Act.

Maclean C. J. & Geidt J.

Shambhu v. Purna Chandra, 12 C. W. N. 122.

-----sec. 171—*Right of depositor to obtain possession—Procedure—Application or suit—*Where a deposit is made under sec. 171 of the Tenancy Act the depositor can, as against the judgment-debtor, obtain delivery of position of the holding advertised for sale, by application to the execution Court, but by such application the depositor is not entitled to invite the execution Court to oust a stranger to the proceeding. If he is met by a stranger, his remedy is by a regular suit for recovery of possession.

Mookenjee & Caspersz J. J.

Ram Narain v. Lal Das Routh 12 C. W. N. 55

Berar Land Revenue Code s. 208—*Right of prevention—*Under section 235 of the Berar Land Revenue Code the right of pre-emption is not confined to persons who have an undivided share in the survey number, but extends to person having divided shares derived from one original title.

Bapu v. Maruti 3 Nag. L. R. 135

Bombay Municipal Act (Bom Act III of 1888) secs. 3 (a) and 504—*Drains—Man-holes—Drains above the surface of ground driven through private property—Compensation—Award—Chief Judge of the Bombay Small Cause Court—*A manhole is included in the expression "any other device for carrying off sewage &c" and falls within the term "drain" as defined in s 3 (u) of the city of Bombay Municipal Act, 1888. The expression "the Commissioner may carry any municipal drain into, through or under any land whatsoever within the city" covers a drain which is above the surface of the ground. The words "into, through or under" are meant to include drains passing over the land. Reading ss. 222 and 594 of the city of Bombay Municipal Act, 1888, together, it is plain that the object of the Act is that if any damage is done or any portion of a man's property is taken away by the Commissioner's action under s. 222 the amount of compensation should be assessed under sec. 504 of the Act, by the Chief Judge of the Small Cause Court, Bombay.

Russell J.

Dattatraya v. The Municipal Commissioners of Bombay 9 B. L. R. 1321.

C. P. Tenancy Act 1898—*Remedies of landlord—recovering rent—*Under the Central Provinces Tenancy Act, 1898, a landlord has two district forms of relief for the purpose of recovering arrears of rent, namely:—

(i) a personal remedy against the tenant based on contract, and enforceable

by a suit for arrears of rent, as such, and (ii) a real remedy, in the form of charge, based on the statute, and enforceable by a suit for sale under the Transfer of Property Act, 1882,

A suit for the former remedy can only be maintained against the tenant or some representative of his personal and contractual liability as such, and is governed by article 110 of the Limitation Act. The latter remedy follows the land of the holding, and a suit to enforce it lies against every person who for the time being may have an interest in such land irrespective of any representation of the defaulting tenant; such a suit is governed by article 132 of the Limitation schedule, and not by article 110. *Kemchand v. Dhanraj* 10 C. P. L. R. 52 distinguished. *Gourishankar v. Laxman* 3 N. L. R. 81 dissented from.

Singai v. Lala 3 N. L. R. 164

Civil Procedure Code, S. 27.—Suit—Wrong person as plaintiff—
Bona fide mistake—Substitution. Where a suit has been instituted in the name of a person who has no right to institute such suit, the Court has power to order that any other person may be substituted as plaintiff, provided it is satisfied that the suit was so commenced through a *bona fide* mistake.

The words "if the suit is brought in the name of the wrong person as plaintiff" cannot be construed as excluding altogether persons who may institute the suit without any right to do so.

Krishna v. The Collector, 2 M. L. T. 447.

—————**Secs. 223, 649—Court—Ceasing to have territorial jurisdiction subsequent to decree—Effect of, on execution application to that Court**
Where the jurisdiction over a place in which mortgaged property was situate was transferred after the passing of the mortgage decree from Court A to Court B, the proper Court to which alone an execution application can be made is Court A which passed the decree. That Court does not cease to have jurisdiction to have jurisdiction for purposes of execution.

Pandurang v. Vythilinga 2 M. L. J. 466

—————**Ss. 232, 368—Application by transferee decree-holder to bring in legal representative—Whether a step in aid of execution—Limitation.** There is nothing in S. 232, C. P. Code, to prohibit a transferee decree-holder from applying for and obtaining an order under S. 368, C. P. Code, to bring in the representatives of a defendant on record, and such an application is a step in aid of execution sufficient to save limitation.

Benson & Wallis J. J.

Mahalinga v. Kuppusami, 3 M. L. T. 21.

———**S. 244**—*Execution of decrees—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased*—Where the decree-holder himself purchases property at auction sale in execution of his own decree but fails to obtain possession, his remedy is by application under s. 244 of the Code of Civil Procedure; he can not bring a separate suit for possession. *Srru Mohan Bania v. Bhagoban Din Pande*, 9 Calc., 602, and *Kishori Mohan v. Chandler Nuth Pal*, 14 Calc., 644 distinguished, *Madhusudan Das v. Gobinda* 27 Calc. 34 *Kattayat Pathumayi v. Rawan Menon* 26 Mad. 740 and *Kalian Singh v. Thakurda* (Weekly Notes 1906, p. 87) followed. *Stanely C. J. & Burkitt J.*

Sheo Narain v. Nur Muhammad, A. W. N. 1908, 12

———**Ss. 244, 310 A**—*Appeal lies under s. 244 against an order rejecting an application under S. 310 A by a transferee of judgment-debtor after Court sale*—The question of setting aside a sale in execution under section 310 A of the Code of Civil Procedure, is a question relating to the execution of the decree within the meaning of section 244 of the Code of Civil Procedure even when the proceeds of such sale are sufficient to satisfy the decree and the auction purchaser is a person other than the decree-holder. *Srinivasa Ayyangar v. Ayyanthuri Pillai*, (21 Mad, 416) followed. The auction-purchaser at a Court sale is the representative of the decree-holder for the purpose of section 244 of the Code of Civil Procedure. *Sandhu Tarangar v. Huesain Saheb* 28 Mad., 87 followed. *Bashir-ud-din v. Jhori Singh* 19 All., 140 not followed. *Mammod v. Locke* 20 Mad., 487 not followed. The transferee acquiring an interest in the property of the judgment debtor after such property had been sold in execution, has a right to apply under section 310 A. of the Code of Civil Procedure. *Husani Ram v. Bodai Ram* (1. C. W. N. 279) dissented from. *Erode Manikoth Krishnan Nayar v. Puttideth Chambikkoseri Krishnan Nair*, (26. Mad, 365) followed. An appeal lies under section 244 of the Code of Civil Procedure against an order passed on an application by such transferee to set aside the sale under section 310. A. *Benson & Wallis J. J.*

Mannikka Odayan v. Rajagopala Pillai 30 Mad., 507

———**S. 258**.—*Decree-holder paid out of Court—Satisfaction not entered—Suit by judgment debtor to recover amount—Cause of action—Damages*. X remitted by a post office money order the amount due by him under a decree; Y received the money order but failed to certify the receipt of the amount and enter up satisfaction of the decree.

Held, that X can sue Y for the recovery of the amount so paid as damages by reason of Y's failure to certify such payment.

The law casts on a decree-holder receiving payment out of Court, the duty of certifying such payment in satisfaction of the decree, and a cause of action accrues when the judgment-creditor fails to fulfil his duty in the matter. *Viraraghava v. Subbakku*, 5 Mad. 397, F. B., followed. Referred case No. 9 of 1905, Madras. (Unreported) not followed.

Subramania Aiyar J.

Madai Thalavoi, 3 M. L. T. 15.

—————**S. 258**—*Judgment-debtor*—*Meaning of*—The word ‘judgment-debtor’ in s. 258 C. P. C. includes persons claiming through the judgment-debtor or in his right, so that even the latter cannot plead an uncertified payment. The article applicable to such representative for making an application for a certificate under sec. 253 C. P. C is art. 73 A of the Limitation Act.

Subramania Aiyar C. J. & Wallis J.

Pandurang v. Vythinlinga 2 M. L. T. 466

—————**S. 325 A.**—*Disqualification to alienate is personal.* The incompetency to alienate fastened upon the judgment-debtor and his representative in interest by S. 325 A of the Code of Civil Procedure, is a personal disqualification. Every alienation made in contravention of the provisions of the said section is not merely voidable by the Collector, but is absolutely void and of no effect against any person whom so ever. *Jhabulal v. Ram Pershad* 4 C. P. L. R. 156, dissented from.

Murray v. Murath Singh, 3 Nag. L. R. 171.

—————**S. 365**—*Death of sole plaintiff*—*Claim of one of the defendants to continue the suit as plaintiff*—*Abatement of suit.* The original plaintiff sued for redemption of a mortgage executed by her father. She claimed as the only unmarried daughter of three arraying as defendants, besides the mortgagee, her surviving married sister and the minor children of the second sister, deceased. During the pendency of the suit the plaintiff died. Held that the claim being personal to the plaintiff the suit abated and that the surviving sister could not be permitted to carry on the suit in substitution for the original plaintiff.

Stanley C. J. & Burkitt J.

Balak Puri v. Durga, A. W. N., 1908, 6.

—————**S. 368.**—*Suit, institution of, in a Civil Court*—*Death of defendant before presentation of plaint*—*Court's power to substitute his representatives*—*Jurisdiction.* Held, that, when a plaint is presented by plaintiff for the purpose of instituting a suit against a defendant in accordance with the provisions of the Civil Procedure Code, and it afterwards turns out that the defendant had died before the presentation of the plaint, the Court has no jurisdiction to substitute the representatives of the deceased

as defendants and allow the suit to proceed as against them. *Mohan Chander v. Azeen*, 12 W. R. 45, approved and followed.

Not only is there nothing in the Civil Procedure Code to authorize the institution of a suit against a dead man as distinct from a suit against his legal representatives but the death of the defendant puts an end to the suit within a prescribed period unless steps are taken within that period for bringing in the legal representatives. *Wallis & Miller J. J.*

P. W. Veerappan v. Tindal Ponnann, 3 M. L. T. 12.

—————**S. 375**—*Lawful agreement or compromise*—*‘Relates to the suit’*—*Compromise in a suit for money by which the agreed amount is charged on property is lawful and the relief by way of charge ‘relates to the suit.’* The language of section 375 of the Code of Civil Procedure is wide and general and does not preclude parties from settling their disputes on such lawful terms as they might agree to without being restricted to such relief as one only of the parties had chosen to claim in the plaint. In a suit for money, where the plaint prays for simple money-decree, an agreement, by which the parties agree that the amount decreed according to the compromise should be a charge on certain properties, is ‘lawful’ and ‘relates to the suit’ so as to be embodied in the decree. *S. Aiyar & Benson J. J.*

Joti Kuruveti v. Isri Sirusadpa 30 Mad., 478

—————**S. 444**—*Guardian ad litem*—*Duty of Court as regards appointment of a guardian ad litem*.—Where the defendant or respondent to a suit or appeal is a minor it is the duty of the court not only to appoint a guardian, but to satisfy itself that the proposed guardian is a fit and proper person to represent the minor, to put in a proper defence and generally to act in the interests of the minor. The duty of the Court is not a mere matter of form. *Mussammatt Bibi Walian v. Banke Behari Parshad Singh*, I. L. R., 21 Bom., 281, distinguished.

Knox C. J. Richards J.

Ramchandradas v. Joti Prasad, 29 All 675.

—————**Ss. 456 and 457**—*Minor, suit brought by, to set aside a dinner passed against him*—*Guardian, ad-litem, appointment of, conditions necessary for*—*Proper representation of minor in a suit to be done with great care*—*Affidavit that the guardian has no interest adverse to the minors*—*Certificated guardian, mortgage executed by, without the sanction of the Court, not void ab initio*—*Negligence on the part of a guardian ad-litem in conducting the suit necessary to be shown before the decree can be set aside*—*Held, that a mortgage executed by a certificated guardian without the sanction of the Court is not void ab initio but that the absence of such sanction relegates the guardian to the position which he would have*

occupied if he had not been granted a certificate at all.

Held also, that where a minor challenges the validity of a decree passed in a suit brought against him, he must establish either that he was not properly represented in the suit in which the decree was passed against him or that the guardian *ad-litem* appointed by the Court was guilty of gross negligence in the conduct of that suit.

Held further, that where a person is appointed by a Court as the guardian *ad-litem* of a minor, it is the duty of the Court to see that the provisions of the Code relating to the appointment of the guardian are duly complied with. There must in such cases be an affidavit verifying the fact that the proposed guardian has no interest adverse to the minor and is a fit person to be appointed. Where therefore there has been no such inquiry at all as to the fitness of the guardian his appointment is not good in law and the minor can not be said to be properly represented in the case and the decree, if any, passed against the minor in such a suit is not binding on him.

Sandars & Greevan J. J.

Gulam Abbas v. Muxna Lall 10 O. C. 321

———**S. 544.**—*Ground common to all the defendants*—Decree against all defendants may be reversed on appeal by one against the whole decree, when such decree has proceeded on a ground common to all. When the decree of the lower Court proceeds on a ground common to all the defendants, the Appellate Court under S. 544 of the Code of Civil Procedure, may, on appeal by one of the defendants against the whole decree, reverse the decree in so far as it affects other defendants though they have not joined in the appeal. It is enough if any one ground on which the decree appealed against proceeds is common to all the defendants. *Syed Hussin v. Madhan Khan*, 17 Mad. 265, overruled. *Seshadri v. Krishnan*, 8 Mad. 192, approved. *F. B.*

Dhuttaloor Subbayya v. Paidigantam Subbayya, 30 Mad. 470.

———**Ss. 545, 546**—*Execution of decree*—*Stay of execution*—*Appeal*—*Sale of immoveable property in execution of decree for money*—*Appellate Court, power of, stay-sale*—*Practice.* *Held* by the Full Bench (*Rampini A. C. J.* expressing no opinion), that when an appeal has been filed against a decree for money, the Appellate Court has jurisdiction to stay the sale of immoveable property of the judgment-debtor in execution of that decree, pending the disposal of the appeal. *Per* RAMPINI, A. C. J. WOODROFFE and MOOKERJEE JJ.—An Appellate Court cannot pass orders under S. 546, para. 3 of the Code of Civil Procedure staying a sale of immoveable property. *Per* BRETT and MITRA J. J.—An Appellate Court has power to

pass an order under the third paragraph of S. 546 of the Code, staying execution. *Kunj Lal Marwari v. Bahitram Marwari*, 8 C. W. N. 381, discussed.

F. B.

Tribeni Sahu v. Bhagwat Bux, 34 Cal. 1037,

———**S. 558**—*Appeal dismissed in default at 11-30 A. M.—Sufficient cause for re-admission of an appeal.* Where a District Judge dismissed an appeal in default at 11-30 A. M. and himself left the Court at 12-30 P. M. while the appellant was preparing an application for restoration. *Held*, that this was a sufficient cause for readmitting the appeal within the meaning of S. 558, C. P. Code.

Reid C. J.

Nabi Baksh v. Abu Somadkhan, 2 P. W. R. 413.

———**So. 562**—*Remand—Appeal from order of remand after decision of the suit in accordance therewith—Held* that no appeal will lie from an order of remand passed under section 562 of the Code of Civil Procedure if such appeal is filed after the suit has in compliance with the order of remand been decided and no appeal is preferred from the decree in the suit. *Madhusudan Sen v. Kamini Kanta Sen*, 9 C. W. N., 895, followed *Rameswar Singh v. Sheodin Singh*, I. L. R., 12 All., 510, distinguished.

Knox C. J. & Richards J.

Salij Ram v. Brij Bilas, 29 All 659.

———**S. 566**—*Remand—Possession, suit for—Lower Appellate Court, power of, on remand.* The plaintiff's suit for possession of certain lands after determination of the boundary between two estates was partially decreed by the Munsif. The defendant appealed, but the plaintiff did not appeal nor file any objection under S. 561 of the Civil Procedure Code. The Subordinate Judge, on appeal, modified the decree in favour of the defendant. Plaintiff then appealed to the High Court, and the case was remanded for trial on a fresh investigation. The Subordinate Judge after a fresh enquiry passed a decree in favour of the plaintiff giving him more lands than what was given by the Court of first instance. On second appeal by the defendant:—*Held*, that under the circumstances, the Subordinate Judge had no power to award to the plaintiff more than what he recovered in the Munsif's Court. *Bikramjit Singh v. Husaini Begam*, 3 All. 643, distinguished.

Stephen & Holmwood J. J.

Agilul Hosain v. Dino Nath Dutt, 34 Cal. 996.

———**S. 566**—*Remand—Return to remand to be made by the Court originally, seised of the case—Jurisdiction—Held* that when issues are remitted for trial under section 566 of the Code of Civil Procedure such issues are triable only by the Court which was originally seised

of the case. The principle of *Sabri v. Ganeshi*, 14 All, 23 followed.

Dillon & Graffin J.

Ali Sher Khan v. Ahmad-Ullah Khan, 29 All 660.

———**Ss. 592 and 407 (d)**—*Leave to appeal informa pauperis—Circumstances to be considered.* In deciding whether leave to appeal *informa pauperis* ought to be granted in a particular case, it is the duty of the Court to have regard to the rules contained in Chapter XXVI, C, P. Code, the right of appeal under S. 592 being subject to the rules contained in the Chapter, and if at the date of the institution of the suit there was a subsisting agreement (falling within the terms of S. 407 (d)) under which another person obtained an interest in the subject matter of the suit the application ought to be rejected. *Mailthi v. Somappa*, 26 Mad. 369 explained.

White C. J. Miller J.

Hanifa v. Haji Siddick, 3 M. L. T. 11.

———**S. 596**—*Appeal to His Majesty in Council—Civil Procedure Code, S. 562—Appeal from order of remand not usually admissible.*—An order under section 562 of the Code of Civil Procedure is not ordinarily capable of being the subject of an appeal to His Majesty in Council, though it may possibly be so, if the order in question has the effect of deciding finally the cardinal point in the suit. *Habib-un-nissa v. Munawar-un-nissa* (Weekly Notes, 1903, p. 159) followed.

Stanley C. J & Burkitt J.

RamSarup v. Ram Dei, A. W. N., 1907, 291.

———**Ss. 596 and 598**—*Leave to appeal to His Majesty in Council, application for—"Substantial question of law," meaning of—Questions of general importance or of general interest.—Held,* that the words "substantial question of law" in s. 596, Civil Procedure Code, mean question of general importance; they do not include a question of the construction of a document in which the parties alone are interested. If no such question is shown to exist leave to appeal to His Majesty in Council cannot be granted.

Chamier & Greevan J. C.

Udairaj Singh v. Raja Bhagwan Bakhsh Sing 10 O. C. 308.

———**S. 596**—*Appeal to His Majesty in Council—"Substantial question of law"—What is a question of fact—Leave to appeal refused.—*

The main question at issue in a suit for partition of moveable and immovable property being whether the family was or was not joint in title and interest, the defendants, on being asked what they would call evidence to prove, set down a series of facts which they alleged that

they could prove, and which, they contended, indicated that the family was at the time of suit joint as to property as well as in other respects. The plaintiff admitted the facts so alleged, and the parties therefore summoned no witnesses on either side. Some documentary evidence, however, was put in mainly consisting of the will of the late head of the family.

Held that the finding on these data as to what was the status of the family was a finding of fact merely and could involve no "substantial question of law" within the meaning of section 596 of the Code of Civil Procedure.

Stanley C. J & Burkill J.

Parsotamrao Tantia v. Janki Bai, A. W. N. 1903, 7.

Contract Act, s. 23—Mortgage contract—Mortgagors not entitled to whole property mortgaged—No illegality—A mortgage contract is not illegal within the meaning of sec- 23 of the Contract Act merely because the mortgagor were entitled only to a half share and not the whole of the property mortgaged.

Mitra & Casperaz J, J.

Jogo Mohan v. Daudong 12 C. W. N. 94

———**Ss. 56—Contract—Impossibility of performance—Rescission of agreement inferred from conduct of parties.**—Section 56 of the Indian Contract Act, does not apply to a case in which the performance of the contract has become impossible in consequence of an act of the promisor himself.

The mortgagor entered into an agreement to sell the mortgaged property to the mortgagee and another, and Rs. 100 were paid as earnest money in pursuance of this agreement. The sale, however was never completed. The mortgagee sued upon his mortgage the mortgagor did not defend the suit; and a decree was obtained *ex-parte*, and the property sold at auction. *Held* that the parties must be taken by their conduct to have agreed to rescind their contract for the sale of the mortgaged property and that the mortgagor was liable to refund the earnest money which she had received.

Bannerji J.

Ganga Dei v. Asaram, A. W. N., 1908, 5.

Contribution.—Suit for—Set off—Limitation. Where in a suit for contribution by a co-sharer for a certain sum of money paid on behalf of his other co-sharers to discharge a decree for rent obtained against them jointly, the latter (i. e. the defendants) claimed a set off on account of previous payments by them of similar decrees for the benefit of the plaintiff amongst others.

Held, that no question of limitation arose as regards the claim for set off. The remedy might have been barred but the right to the debt was not extinguished.

Brett & Mookerji J. J.

Gajaddhar Mahto v. Raghubar Gope, 12 C. W. N. 60.

Court Fees Act, (1870), S. 7, CL XI (c) and V.—*Suit to recover possession of land—Landlord and tenant—"Occupancy of land"—"Ejected"*—*Suits against landlord and persons claiming melvaram under the landlord.* *Held*, that a suit by a tenant for possession as against his landlord and other persons in possession claiming under the landlord does not fall under Cl. XI (c) of S. 7 of the Court Fees Act especially where the persons claiming under the landlord are not persons in actual possession, but merely lay claim to the melvaram rights in the land. The suit falls under Cl. V of S. 7, viz. "suits for the possession of lands, houses and gardens."

The terms "occupancy of land," and "ejected" in Cl. XI (c) of the Court Fees Act are applicable to the case of ryots or persons in actual physical occupation rather than to persons who are only entitled to the melvaram rights.

Benson J.

A. V. P. Palaniappa v. Sithravalu, 3 M. L. T. 8.

———**Sch. II, art. 17 (i)**—*Suit under S. 283, Civil Procedure Code—Stamp on the plaint—Declaratory suit and injunction—Value of suit.* Where a suit is brought under S. 283 of the C. P. Code, the proper Court fee payable on the plaint is Rs. 10 under clause (i) of article 17 of Sch. II of the Court Fees Act.

When a suit asks for a declaration and for an injunction, it is not one merely for declaratory decree but also for consequential relief.

When a plaintiff seeks to challenge a decree in execution of which his property has been attached, the value of the action is the value to the plaintiff, so that if the execution debt exceeds the value of the property, the latter is the value of the suits; if the execution debt is less than the value of the property, the former is the value of the suit.

In suits to set aside summary decision as also in those dealing with arbitration awards, the amount of Court Fees payable on the plaint does not depend upon the value of the suit.

P. C.

Bibi Phul v. Ghansyam, 7 C. L. J. 30 = 12 C. W. N. 169. = 10 Bom. L. R. 1.

———**art. 17**—*Partition suit—Fixed fee or ad valorem fee.* The

suit for partition of joint property is governed by Sch. II, Art. 17, Cl. vi of the Court Fees Act and the plaint is properly stamped, if a Court fee often rupees is paid upon it. A mere denial on the part of the defendant as a plaintiff's title and possession does not convert the suit into one for declaration of title and recovery of possession: the plaintiff is entitled to maintain a suit for partition, if his possession of some part of the joint property is admitted or established, but if it is established that he is not in possession at all of any portion of the joint property, that there has been a complete ouster, he must sue for recovery of possession and partition and pay *advalorem* Court fees upon a plaint appropriately framed for the purpose.

Mookerji & Caspersz J. J.

Bidhata Rai v. Ram Charitar, 12 C. W. N. 37.

Custom—Alienation—Gift ancestral holding by a childless—Awan of Phulpur Jullundur District. *Held*, that an Awan of the Jullundur District has not an absolute and uncontrolled right to give away ancestral land to strangers and non relations to the prejudice of his collateral relations though his powers of disposition are undoubtedly large, and that the ordinary principle of reversion of the gifted land to donor's line on failure of the donee's lineal heirs does apply to them also.

Chatterji & Johnstone J. J.

Barkat v. Jhandu, 2 P. W. R. 488.

Custom—Succession—Sister—Position of sister cannot be assimilated to that of a daughter—Collaterals exclude sisters from inheriting immoveable property whether ancestral or acquired. *Held*, that when a land owner following the Punjab Customary Law dies leaving no issue but a sister, her position for the purposes of inheritance cannot be assimilated to that of a daughter of his father (the penultimate male holder).

Held, also that according to the Punjab Customary Law a sister is not entitled to succeed in presence of collaterals.

Civil Appeal No. 599 of 1904 (decided on 17th July, 1905), published as an appendix and followed in Civil Appeals Nos. 1087 and 1370 of 1906 followed.

Civil Nos. 103 of P. R. 1900 and the final decision of the Division Bench in No. 110 of P. R. 1906, F. B. 59 P. W. R. of 1907 (Civil) overruled.

Principles laid down in P. R. (Civil) Nos. 117 and 171 of 1888 and 46 of 1891, F. B. distinguished and not followed.

F. B.

Hamira v. Ram Singh, 2 P. W. R. 516.

— — *Shamsi Khojas of Lahore District—Succession—Mahamadan Law—Customary right of representation—Onus—Duty of Court to inquire Custom Act IV of 1872, S. 5—Relevancy of instances in other localities.* Held, that Mahamadan Shamsi Khojas of Lahore District, who are Hindu converts to Islam and were originally *Khatris* or *Aroras* by caste, follows custom in matters of inheritance, and customary right of representation which extends to collateral as well as to lineal succession is recognised by them, and the rule of Mahommedan Law, which excludes issue of a predeceased person, is wholly inapplicable to them, P. R. (Civil) No. 27 of 1868 and 52 of 1888, followed.

Obiters—Held, also that S. 6 of Act IV of 1872, makes no distinction between agriculturists and non-agriculturists and lays down a rule of decision for all classes without distinction of caste creed or calling and that there is no initial presumption in favour of personal Law under the provisions of this section and it is the duty of the Court trying the case to ascertain at first the rule of decision by enquiring into the custom pleaded by either party and on the failure of proof of such custom to apply the provisions of their personal Law. P. R. 81 of 1874 (Civil) followed.

Held, further that cases relating to the same tribe residing in different localities are applicable and relevant to prove a custom of theirs when there is social intercourse between the different sections of the tribe who reside in those localities, and that where an alleged custom is in accord with judicial experience and forms one of a few customs found to prevail in a Province, even a few instances unrebutted by any to the contrary would decisively be sufficient to prove the alleged custom, but such is not the case when the alleged custom is unusual or exceptional or opposed to established usages or found by judicial experience.

Rattigan & Lalchand J. J.

Ma'ab Din v. Abdullah, 2 P. W. R. 405.

Debutter property—*Permanent lease by Shebait void and not wilable—Adverse possession—Acceptance of rent, effect of*—A permanent lease of debutter property is void if not executed for legal necessity. Plaintiff's predecessor who had a *Karsha* lease obtained a permanent lease from the Shebait of an idol, the predecessor of Defendant No. 2, on payment of a bonus, and the latter who is the present Shebait continued to receive rent from plaintiff; subsequently Defendant No. 2 determined plaintiff's lease and took possession. In a suit for possession by the plaintiff.

Held—That plaintiff's possession under the permanent lease which

was found to have been executed without legal necessity and therefore held to be void can not be regarded as adverse to Defendant No. 2 nor can the latter's acceptance of rent from the plaintiff either operate as an admission of the plaintiff having a permanent right in the land or cause extinction of his own previous title. *Rampini C. J. & Sharfudin J. J.*

Nitya Gopal v. Mani Chandra 12 C. W. N. 63

Decree—Construction of—Condition—Time for payment—Appeal—Appeal—Confirmation of original decree—Computation of period—Held—that a decree of Appellate Court merely affirming the decree of the first Court does not give the decree-holder fresh time for performing a condition imposed by the original decree. *Manuvikraman v. Uuniyappan* (15 Mad., 170), *Jaggu Nath v. Jo Kuha* (18 All., 223), *Bhole Nath v. Kauti* (25 Cal.: 311), (*Pattoji v. Ganu* (15 Bom. 357) followed. *Rupchand v. Sham Shul* (11 All. 1346), *Noor Ali v. Koni* (13 Cal., 13) *Daulat v. Bhnkandas* (11 Bom. 172) not followed. *Babu v. Bijai* (23 All., 152) explained and distinguished.

Appellate Court should so frame its decree, while affirming the decree of the lower Court, as to leave no doubt as to whether it is intended to extend the time granted by the original decree for fulfilling the conditions precedent imposed by the original decree. A decree provided that on the plaintiff paying into Court the balance of consideration Rs. 10 within a month from this date the defendant should execute a sale deed of the suit land in plaintiff's favour. The plaintiff did not pay Rs. 10 within the month, and after the expiration of the month, the defendant appealed. The decree of the Appellate Court simply confirmed the decree of the lower Court and dismissed the appeal.

Held, that the plaintiff decree-holder was not entitled to count the time allowed by the decree for the deposit from the date of the appellate decree.

Benson & Wallis J. J.

Ramasamy v. Sundara 3 M. L. T. 26

Digwar—Service tenure—Resumption—Digwars of Ram Gurh—Dismissal by Government and resettlement with them as sikmi talukdars—Default, proof of—Act VIII B. C. of 1878, settlement under—Effects—The Digwari service in this case corresponded closely with what in other cases have been termed ghatwalli. There is nothing in the use of terms Digwar to raise any presumption in favour of the contention that the holders of land by a service so named to hold as personal servants of the Rajah. If any thing, the presumption would seem to be the other way.

The power of Government, although generally exercised through the

Rajah was always recognised as supreme with respect to the supervision over Digwars in regard to the charge by them of their police duties. The Rajah of Ramgurnh never possessed or exercised a right to dismiss the Digwaris and to resume the Digwari grants, save in cases of default; and by the terms under which persons held Digwari grants, no such power was given or reserved to the Rajah-

The dismissal of the Government by Digwars and the substitution for them of a new system of rural police supposed to be of superior quality does not entitle the Rajah to resume the land as for default. The subsequent settlement of the lands by Government, purporting to act under Act VIII B. C. of 1878, with the dismissed Digwars treating them at Hikni taluk-dars, and imposing on them assessments for road and police purposes of an amount of beyond the burden which previously rested on the holdings in the shape of supplying patrols, amounted to a continuance in the form imposed by statute of their public duties. There was no default.

Pigot & Beverly J. J.

Nam Narain v. Tckait Ganghu 12 C. W. N. 178

(This is a very old case.)

Easement Act, sec. 60.—*Land holder and tenant—Occupation of building site in abadi—Erection of permanent building—Suit for ejectment*—The defendants were found on the evidence to be tenants at will of the plaintiff of land in the abadi, the land having been allotted to their ancestors on condition of their rendering service as patwaris. The defendants had ceased to perform the duties of patwaris, but still occupied the land, and had built houses thereon of a permanent character. *Held*, on suit by the zamindar to eject the defendants, who had denied the zamindar's title, that the principles laid down in *Beni Ram v. Kundan Lal*, 21 All., 496 applied, and that there was no such conduct on the part of the zamindar as would justify the inference that she had contracted that the right of tenancy under which the defendants originally obtained possession of the land should be changed into a permanent right of occupation; neither could the defendants pray in aid section 60 of the Indian Easement Act 1882. *Held* also that the acquisition pending the suit by one of the defendants of a share in the village in which the land in suit was situated did not give the defendants any title to retain the possession of the site in the abadi for which the plaintiff was suing to eject them.

Knox C. J. & Dillon J.

Budh Singh v. Parbati 29 All. 652

Guardians and Wards Act, sec. 52.—*Act No. IX of 1875 (Enli-*

an Majority Act), section 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, section 440—Where a guardian has once been appointed under the provisions of Act No VIII of 1880, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives *Gordhandas Jadouji v. Harivalubhdas Bhaidas* 21 Bom, 281 followed. *Patesri Partab Narain Singh v. Champa Lal* Weekly Notes, 1891, p. 118, distinguished. F.B.

•*Sadho Lal v. Murlidhar*, 29 All, 672

Hindu law—Joint Hindu family—Mortgage executed in name of minor—Contract Act S. 11—Civil Procedure Code, S. 562—"Preliminary point."—A mortgage in favour of a joint Hindu family is not void because it happens to be executed in the name of a member of the family who at the time of execution is a minor. *Mohori Bibi v. Dharmodar Ghose* 30 Cal., 539 distinguished.

Held also that the decision of an issue as to whether or not the documents which formed the basis of the suit was void in consequence of its having been executed in favour of a minor was a decision on a preliminary point, such as justified a remand under section 562 of the Code of Civil Procedure. *Mata Din v. Jamnadas* 27 All, 691 followed.

Bannerji & Richards J. J.

Meghandube v. PranSingh, A. W. N., 1908, 10.

—————Mortgage of ancestral property by manager—Sale of mortgaged property in contravention of S. 99 of the Transfer of Property Act—Alleged adverse possession by a mortgagee.—The managing members of a joint Hindu family consisting of two brothers and the sons of one of them executed in 1872 a mortgage of joint ancestral property. In 1884 the surviving mortgagor allowed the mortgaged property to be sold in execution of a simple money decree against himself, and it was purchased by one J. L. In 1890 J. L. mortgaged the property usufructually to R. P., but remained in possession as lessee of the mortgagee. In 1904 the sons of the original mortgagor, who were no parties to the sale of 1884, sued for redemption. Held that the plaintiffs were not bound by the sale held behind their backs and in contravention of the provisions of section 99 of the Transfer of Property Act, and had not lost their right to redeem. Held also that the fact of the auction purchaser having mortgaged the property again—even if the sons had notice of it—would not make the possession of J. L. adverse to them.

Dillon J.

Jhabbalal v. Chajjumal, A. W. N. 1908.

———*Mitakshara—marriage—samaskara—Marriage of a co-parcener—Family purpose*—According to Hindu law, a debt contracted for the marriage of a co-parcener in a joint Hindu family is binding on the other co-parcener as a debt contracted for a family purpose and therefore for the benefit of the family, *Govindrazulu v. Deverabhotla* (27 Ind 206,) dissented from. Under the Mitakshara as well as the Mayukha word “*sanskara*” ordinarily includes marriage.

Chandavarkar & Knight J. J.

Sundarabai v. Shivnarain 9 Bom. L. R. 1366.

———*Joint family—Gift of a considerable portion to females—Effect of, on other members*—Whatever weight be given to the text of Mitakshara I. I 27 it cannot be held to authorise the setting apart of a considerable portion of the family property whether moveable or immovable and the partition of it among the ladies of the family. Out of the joint family property belonging to R and his son, R made a gift of a considerable portion of the same to his wife and three daughters.

Held, upon a suit by the grandson of R, that the gift was not authorised under the Mitakshara and must be set aside. *Bachu v. Mankorbui* (29 Bom. 51) and *Hanmantappa v. Jivubai* (24 Bom. 547) explained. *Ramaswami v. Vengidasawamy* (22 Mad 113) distinguished.

Boddam & Miller J. J.

Kujili v. Bappula 3 M. L. T. 23

———*Reversioners—Agreement to divide reversion when it should fall in, creates no vested right, but only right to claim specific performance.*—Three brothers S, R, and K and their father made an arrangement which amounted to a division of the family properties. The father and R and K continued, however, to live together. The father died first and then R, leaving him surviving A his widow and B his daughter, A and B did not claim R's share, but were content with maintenance. There was, however no surrender by A of her rights. S and K entered into an agreement between themselves to the effect that K should enjoy R's share and maintain A and B, S being given a small piece of land at once and that after A's death, S was to take half of R's share. B died unmarried in A's life-time and S predeceased A who died in 1891. In a suit brought in 1901 by the son of S to recover one-half share of R's property:—*Held* (WALLIS, J., dissenting) that K and S were expectant reversionary heirs and the agreement between them was in effect to divide the reversionary when it should fall in. The right of K as such presumptive reversionary heir was incapable of transfer on the principle embodied in section 6 of the Transfer of Property Act, and the agree-

ment did not operate to vest any property in S as from the date of agreement and the suit was not therefore maintainable. *Per Boddam J.*—The agreement gave only a right to claim specific performance thereof when the reversion should fall in, which right became barred as it was not enforced within the statutory period after the death of the widow. *Per Wallis, J.*—The widow not having claimed her husband's share and having contented herself with maintenance, S and K were not in the position of expectant heirs, although the widow by asserting her right might have reduced them to that position. Under the circumstances the agreement was something more than a mere contract on the part of K to convey to S a half share on the widow's death. The effect of the agreement was to give S a vested interest in a half share in the lands to take effect in possession of the widow's death and the suit was therefore maintainable.

Boddam & Wallis J. J.

Pindiporlu Sooraparaju v. Veerabhadhrudu 30 **Mad.** 416 = 2 **M. L. T.** 443

———**Alienation by widow Succession—Custom—Hindus of Bhale Sultan Chattris—Exclusion of daughters and their issue—Mitakshara Law—Consent of reversioners—Rule as to quantum of consent—Consent obtained after execution of alienating deed.** Among the tribe of Bhale Sultan Chhattis it is the custom that daughters and their issue are excluded from succession to the separated estate of their father.

Under the Mitakshara law a widow has power to alienate her deceased husband's estate with the consent of her husband's kindred and ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible; it is immaterial that the consent is obtained after the execution of the alienating deed. *Radha Shyam v. Joy Ram*, 17 **Cal.** 896, approved. *Rampal Rai v. Tula Kuari* 6 **All** 116, overruled to. **P. C.**

Bajrangi Singh v. Mano Karnika Bakhsh, 9 **Bom. L. R.** 1348 = 3 **Mad. T. J.** 1 = 12 **C. W. N.** 34 = 5 **A. L. J.** 1

———**Joint Hindu family—Mitakshara—Ancestral property—property inherited from maternal grand father.—Held that a son in a joint Hindu family does not acquire by birth an interest jointly with his father in property which the latter inherits from his maternal grandfather.** *Vythinatha Ayyar v. Yeggie Narayana Ayyar*, 27 **Mad.**, 382, dissented from. *Sudarsanam Maistri v. Narsimhlu Maistri* 25 **Mad.**, 149, discussed.

Bannerji & Aikman J. J.

Jamna Prasad v. Ram Partap, 29 **All.** 667.

———**Religious endowment**—*Right to appoint manager*—According to Hindu law, when a religious endowment has been founded, the right to appoint a manager or superintendent remains in the founder and his descendants, unless there is evidence to show that the founder or his descendants have made any inconsistent disposition. *Go samee Sree Gredharreejee v. Rumanlolljee Gossamee*, L. R., 16 I. A., 137 *Sheoratan Kunwari v. Ram Parjash*, 18 All., 227, and *Mussumat Jai Bansi Kunwar v. Chattar Dhari Singh*, 5 B. L. R., 181, followed.

Knox C. J & Dillon J.

Sheo Prasad v. Aya Ram, 29 All 663.

Insolvency act—*Order passed by chartered High Courts, Effect of—Decree holder, right of, where debt wrongly entered in the schedule—Order of discharge passed by Chartered High Courts operates throughout the whole of British India*—Held that, where a judgment-debtor had been declared insolvent by the High Court at Calcutta but the amount due to a particular decree-holder had been entered wrongly in the schedule of debts filed by the judgment-debtor, the decree-holder was not entitled to proceed in execution against the judgment debtor for the amount of the decretal money not entered in the schedule. The order of the High Court should be considered as giving the judgment-debtor a personal discharge as to the claim whatever its amount might be, the remedy of the decree-holder in such a case being, if any, to move the High Court to re-consider its decision.

Held, further, that orders relating to insolvency passed by the Chartered High Courts under the Insolvent Debtors' Act do not extend only to Presidency towns but operate throughout British India.

Chamier & Greevan J. C.

Bithaldas v. Munshi Ihtisham Ali 10 O. C. 305.

Jurisdiction—*Claim for pre-emption of revenue paying land—Competency of Court to entertain it with regard to its value at thirty times the Jama—Its incompetency to decree possession on payment of a sum exceeding its pecuniary jurisdiction—Return of plaint—Held*, by the Full Bench, that although a suit for possession of revenue paying land on the ground of pre-emption can be entertained by a court having jurisdiction with regard to the value of the land calculated at thirty times the Jama, but it has no power to decree the claim on payment of a sum in excess of the limits of its pecuniary jurisdiction. Civil appeal No. 941 of 1905, published as No. 16 (civil) of the P. W. R. of 1907 followed.

P. R. (civil) Nos. 58 of 1902, 24 of 1903 and 46 of 1906, approved.

Civil appeal No. 427 of 1907; P. R. (civil) No. 29 of 1803 and Civil appeal No. 427 of 1907; P. R. (civil) No. 29 of 1893 and Civil appeal No. 672 of 1901 overruled.

F. B.

Mohammad v. Nandlal 2 P. W. R. 456

Kathiawar—*Test to determine nature of mortgage—Receipt of rents*—The test in deciding upon the character of mortgage enjoyed the usufruct *i. e.* the rents and profits of the property and no more than receipts of rent, is required to establish an usufructuary mortgage, and receipt of rents by way of interest is inconsistent with the idea of a mere simple mortgage.

Shah Panachand v. Kadia Lalji 17 K. L. R. 258

———*Limitation for execution—18 years*—The lifetime of a decree in Kathiawar is 18 years and not 12 (Vide K. L. D Part II p. 956 and VI K. L. R. 180) and there being no provision on the subject in the Kathiawar Limitation Rules of 1890, there is no warrant for the supposition that they restricted the prior of 18 years to 12 years.

Thakar Hansraj v. Khachar Odha 17 K. L. R. 268

Land Acquisition Act, 1894—*Acquisition by Government of a part of mortgaged property—Mortgagee entitled to whole compensation*—*Transfer of property Act IV of 1882 sec. 73*—Held that a mortgagee is entitled to take as much security as he can get, for his mortgage money, and when part of the mortgaged property is compulsorily taken from him and converted in to money, his security is diminished *pro tanto*, in equity the money is the mortgaged property itself and is subject to the same lien as the remaining property is; and that the mortgagee is entitled to get whole of the money in part payment of the mortgage debt.

Principles laid down in sec. 73 of the Transfer of Property Act applied. I, L, R, All, XVI P. 78—Calcutta XX, P. 241—Stewarts Trusts XXII L, J, R. (N. S.) p. 369 followed.

Reid J.

Topan Das v. Tesa Ram 2 P. W. R. 403

———**Ss. 11, 12, 14, 23, 24**—*Acquisition of land for public purposes by the Government—Principles to be adopted in determining compensation—Proceeding of collection upto his award only administrative Market value defined—Collector's award when final—Incompetency of the person interested and of the Civil Court to contest its validity on the ground of irregularity—Held, that proceedings under the Land Acquisition Act, I of 1894 upto Collector's award are not judicial but merely administrative, and that neither the person interested nor the Civil Court*

can question the validity of the award on the ground of any irregularity therein.

Held, also that the proposal of a Collector specially appointed for the purposes of the Land Acquisition Act, to allow to the person interested a certain amount of compensation for the property to be acquired, which the said officer refers, under the Departmental rules the Collector of the District also empowered to act under the said Act for his information and approval is not an award within the meaning of sections 11 and 14 of the Act, but is the one finally made by the Collector of the District and it then becomes binding on the Government. Civil No. 115 of 1906 P. R. and I. L. R. Calc. XXX page 36 and XXII p. 605 followed.

Held also, that sec. 23, clause 2, and sec. 24 clause (5) of the Act must be read together and market-value in the former section means market value in the Dictionary sense-tempered by the caution in the latter section.

Held, further, that the market-value in section 23 clause 2, of Act I of 1894 means the actual value which the property to be acquired, would have commanded at the date of the notification, under sec. 4 of the Act had the Government not intended to acquire it, and that the Court must not take into account probable increase in value due to the purpose for which the acquisition is going to be made. *Johnstone & Rattigan J. J.*

Farman v. The Secretary of State for India P. W. R., 498

Section. 11.—Jurisdiction of Court—Government denying title of claimant—*Held*, that the Divisional Judge is bound to decide a case referred to him under Section 18 of the Land Acquisition Act, when the Collector finds that the claimant has an assessable interest in the property acquired, and he can not decline to exercise jurisdiction on the ground that the Government denies before him the title of the claimant to the property.

Johnstone & Hurry J. J.

Amolak Shah v. The Collector of Lahore P. L. R. 1907, No. 87.

Landlord and Tenant—Inamdar, tenant under—No presumption that tenant has permanent occupancy right. The position of inamdars differs materially from that of zamindars and the presumption that person becoming tenants of zamindars after the permanent settlement become occupancy tenants does not apply to persons who become tenants under inamdars.

Boddam & Wallis J. J.

Marupa v. Neelakanta, 30 Mad. 502.

Central Provinces—Malikana Buza. Though a tenant of a

malikana buza is styled a sub-tenant, the sale of the malikana buza property does not necessarily determine the sub-tenancy. The purchaser can eject the sub-tenant only in circumstances in which the original malikana buza could have done so.

Batten A. C. J.

Shamlal v. Kanhal Lal 3 Nag, L. R. 162.

——— *Arrears of rent—Civil Court decree—Distraint by landlord subsequent to decree illegal—The doctrine of merger.* A landlord is not entitled to go on distraining for arrears of rent after his cause of action has merged in a decree for such arrears, and a summary attachment of this kind would be illegal when at the date of the attachment the landlord has obtained a judgment of the Civil Court for the amount of the rent due. *Venkatachelapatni v. Robert*, 17 M. L. J. 295; *Chancellor v. Webster*, 9 T. L. R. 568; *King v. Hoare*, 13 Mand W. 494, followed. *Weggy Prosser v. Evans*, L. R. (1895) 1 Q. B. 108; *Drake v. Mitchell*, 3 East 251, explained and distinguished. The doctrine of merger is an application of the maxim '*Nemo debet bis vexari pro una et eadem causa*' and is applicable to the circumstances of this country. *Benson & Wallis J.J.*

Chinnappa v. Robert 3 M. L. T. 22.

——— *Construction of deed—Cess, liability to pay—Cess, Act (IX B. C. of 1880) sec. 41—Mokurari lease—*A perpetual Mokurari lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity.

It is open to the zamindar and the tenure-holder to contract themselves out of the provisions of sec 41 of the Bengal Cess Act. Where in a perpetual Mokurari lease the rent was fixed by a chance which runs thus "at varying jamas to wit up an annual jama of Rs. 1,500 from 1584, to 1291 (Fasli) and at an amount in form consolidated jama of Rs. 1585 of the current coin from 1292 (Fasli) together with alewate such as selami for Dusserah and Holi, Purkha, Sair, Road cess, Public works cess, &c., all of which are included in that very sum of Rs. 1585."

Held, That the contract does not provide for the contingency which happened in this case, namely, an increase in the amount of cesses levied by the statute. That if any additional cess it is imposed or if the amount of cess is increased, the incidence of the new hurden must be regulated according to the statute.

Mookerjee & Caspersz J. J.

Mahanand v. Musmit 12 C. W. N. 154.

Lease—Condition for payment of rent in advance—Suit by purchaser of demised property for rent—Registration—Notice. Certain property was leased for a term of 10 years, the lease containing a provision

to the effect that if at any time during the currency of the lease the lessor should demand any portion of the rent in advance from the lessee, the latter should be bound to pay it on obtaining a receipt. Subsequently to the execution of this lease the demised property was sold by auction in execution of a decree. The auction purchaser sued the lessee for rent, but was met by the plea that the rent claimed had been paid to the lessor in advance under the terms of the lease. The lease was registered and it was found that the auction purchaser had not made inquiry of either the lessor or the lessee as to whether or not any rent had been paid in advance according to the terms of the lease. *Held* that under these circumstances the plaintiff was not entitled to recover.

Stanley C. J. & Burkitt J.

Nand Kishore v. Anwar Husain, A. W. N., 1908, 13.

Legal Practitioner's Act 18 of 1878—Section 28—Pleader—
Agreement to allow legal fees to be set off against money advanced to a pleader by a client.—A client advanced certain money to a pleader who subsequently appeared for the lender in various cases. On suit by the lender to recover his loan the pleader set up an agreement entitling him to set off against the money borrowed his fees for professional services. *Held* that the pleader was entitled to a set-off in the shape of reasonable remuneration for services actually rendered, although there was no such agreement as required by the Legal Practitioners Act section 28.

Griffin J.

Chhannulal v. Asharfilal 29 All 649.

Limitation Act, S. 4, 28.—*Insufficiently stamped plaint presented within Limitation but deficiency made good after expiry of Limitation—Effect of first presentation—Institution of suit—Civil C. Code, S. 48—Court Fees Act Ss. 6 and 28.* *Held*, that for the purposes of Law of Limitation, a suit is instituted on the day when the plaint is first presented and it makes no difference whether the plaint is duly or insufficiently stamped at the time of its presentation, if the deficiency is made good by the plaintiff within the time allowed by the court.

Held also :—

(1) That the word "presented" in the explanation to S. 4 of the Indian Limitation Act should be interpreted in accordance with the provision of the Code of Procedure, S. 48.

(2) That the Court Fees Act and the Civil P. Code should be read together in regard to the presentation of plaints and the making up of

stamp duty, but not with the provisions of the Limitation Act, which is not an Act in *para materia*.

(3) That under S. 54 of the C. P. Code and S. 28 of the Court Fees Act deficiency in stamps can be made good by order of Court irrespective of the question whether on the date of filing the limitation for the suit has expired or not.

(4) That under S. 28 of the Court Fees Act on the making up of the deficiency of stamp duty by order of Court the plaint and all proceedings relating thereto are validated from the date of original presentation, even though the limitation for the suit had since expired.

(5) That once the stamps are taken by the Court the order cannot be subsequently set aside, nor the validation of the original presentation cancelled.

Chatterji & Johnstone J. J.

Saif Ali Khan v. Fazai Mehdi Khan, 2 P. W. R. 490.

———**Ss. 5, 12**—*Appeal filed out of time—Bona fide mistake of pleader in calculation—Application for admission granted ex parte by a Division Court—Application for discharge of order by Respondent—Delay—costs incurred by Appellant.* Where an application for the admission of an appeal which was filed out of time by two days was heard ex parte before a Division Bench and admitted.

Held that though the order was not conclusive on the Respondents and they are entitled to object to the admission of the appeal at a later stage the order of the Division Bench admitting the appeal should not be discharged when no facts which were not before that Bench are urged on behalf of the Respondents.

Held, further that on the facts of the present case, the order admitting the appeal should not be discharged inter alia because the Respondent's application was made after the records had been printed and costs incurred by the appellants, although the Respondents appeared [to have become aware of the filing of the appeal out of time shortly after it was filed.

Per Woodroffe J.—Each case must be decided on its own facts. In this case besides the delay on the part of the Respondents in bringing their objections before the Court, there was a bona fide mistake of calculation on the part of the Appellant's pleader which led to the delay in filing the appeal.

Woodroffe & Coxe J. J.

Bishendut v. Nandan, 12 C. W. N. 25.

———**Ss. 5 and 14**—*Limitation—Appeal—Delay in filing appeal due to appellant bona fide accepting erroneous legal advice.*—Where a

client *bona fide* accepts the advice of counsel as to the proper procedure to adopt in the course of litigation, and misled by that advice fails to file an appeal within time, he is entitled to the benefit of section 5 of the Limitation Act, *BalvantSing v. GumanRam*, 5 All., 591 *Brij Mohandas v. Mannu Bibi* 19 All., 348, and *KuraMal v. Ram Nath*, 28 All., 414, followed.

Aikman J.

Anjora Kunwar v. Babu, 29 All 638.

—————**Art 61 and 83**—*Suit on bond to recover money of which a third party has in fact had the benefit—Compromise of suit by heirs of obligor—Suit to recover money paid under compromise.*—U. S. borrowed money on a bond from U. R. The sole obligor of the bond was U. S., but the money was in fact borrowed for the use of, and was paid to, one M. From time to time the original bond was renewed, and ultimately U. R. sued upon the last bond and obtained a decree for a large sum of money against the heirs of U. S. The defendants appealed to the High Court, but pending the appeal entered into a compromise with the plaintiff on the 2nd of January 1900, whereby they agreed to pay to the plaintiff the sum of Rs. 51,000 and costs of the High Court. Upon the 5th of November 1902 the heirs of U. S. paid to the plaintiff decreeholder in pursuance of this compromise Rs. 40,000, and on the 17th of July 1903 they instituted a suit against M. to recover the amount so paid and their costs. *Held* that on the facts U. S. was not a surety for M., but the principal debtor, although the money was borrowed for M.'s benefit; that the payment made on the 5th of November 1902 in pursuance of the compromise referred to above was not gratuitous, and that the heirs of U. S. were entitled to recover from M. the sum of Rs. 40,000 so paid with interest, but not the costs of the High Court, in respect of which the suit was barred.

Knox C. J. & Aikman J.

Girrai Singh v. Mul Chand, 29 All 627.

—————**Articles 62, 120 and 131**—*Limitation—Jagir—Suit to establish right—Suit for recovery of Jagir money*—Article 131 of the Limitation Act refers merely to a suit to establish right of periodically recurring nature, and the cause of action is the refusal of plaintiff's enjoyment of such right. It does not extend to cover cases in which a plaintiff seeks to recover specific sums of money due to him on the basis of such recurring right. Such cases are governed by Art. 120. *Johnstone & Rattigan J. J.*

Dost Mohamad v. Sohan Singh P. L. R. 1907, No. 89.

—————**Article 136**—*Mortgage-suit by purchaser of equity of redemption—Punjab Courts Act (XVIII of 1884), Section 40 (1)(b)—*

Jurisdiction—Further appeal—Value of property—Suit for redemption—Alienation—Necessity—Sale.—Article 136 of the second Schedule of the Limitation Act governs a suit by the purchaser of the equity of redemption for possession of mortgaged property. The period begins to run from the date on which the plaintiff becomes entitled to possession.

Clerk J. & Robertson J.

Badrimal v. Gopal P. L. R., 1907 No 100.

———*Articles 139, 141 and 144—Suit for possession of immovable property—Suit by reversioner against tenant will holding over the estate of a widow.*—A reversioner has twelve years to sue for possession of immovable property, a tenant at-will holding over the property of the widow after her death, and the period begins to run from the date when an adverse title is set up by the tenant,

Reid C. J.

Ghudu Singh v. Khushal Singh, P. L. R., 1907 No. 91

———*Art. 118—Scope of suit to recover property—Held, that a suit for possession of immovable property on the ground that an adoption invalid &c. is governed by Article 118 of the Indian Limitation Act.*

This Ruling is approved and referred to in P. W. R. (civil) No. 72 of 1907.

Johnstone J

Mahar Singh v. Gurbachan 2 P. W. R. 463.

———*Art. 179 (4)—Step in aid of execution—Application for execution to one court to transfer the decree to another under S. 223 C. P. Code.* An application for execution to Court A to transfer the decree for execution to the Court B having jurisdiction over the area is a step in aid of execution within the meaning of Art. 179 (4) of the Limitation Act.

S. Aiyar & Wallis J. J.

Panduranga v. Vyithinatha, 2 M. L. T. 466.

———*Art 179 (6)—Decree directing maintenance from date of plaint is a decree within clause 6—Res judicata—Erroneous decision on question of law no bar.*—A decree directing payment of future maintenance from the date of plaint, till death of recipient at a certain rate, is a decree for payment on that date in every subsequent year and the period of limitation for the execution of such a decree is that prescribed by article 179 (6) of the Limitation Act. An erroneous decision on a question of law in a previous application for execution of such a decree does not operate as a bar in a subsequent application to recover arrears which accrued subsequently. *Kaveri v. Venkamma, 14 Mad., 396, followed.*

Benson & Wallis J. J.

Aitamma v. Naraina Bhatta 30 Mad., 504,

Madras District Municipalities Act, sec. 170—External roofs—
Held, that it is erroneous to say that sec. 179 of the Act operates only when
 the roof, &c. are constructed outside the house &c., externally.

Subrahmania Aiyar J.

The Public Prosecutor v. Narayansawamy 1 Cr. L. R., 390.

Madras Local Board Act, secs. 162, (c) (d), 165—Contract Act,
Art. 74—Deed of agreement—Construction of—Civil suit wi-
thout Criminal Prosecution—Penalty—Suit to recover—Limitation Act,
*Arts. 6, 68, 115—*The defendants entered into a contract with the president
 of a Taluk Board in respect of the collection of fees in a market which pro-
 vided inter alia—“ If I my agent or servant were to act contrary to the
 above regulations, I shall be liable to pay a fine not exceeding Rs. 50 im-
 posed by the President.....or I am not entitled to object if my gutta is put
 up for auction again, (myself being) subject to the loss that may be sustain-
 ed by the Taluk Board. ” The president brought this suit for recovery of
 Rs. 50 on the allegation that the defendant's agent collected more than the
 established fees from the people contrary to the Regulations.

Held, (1) That the agreement was not an instrument of the same nature
 as a bail bond or recognizance within the meaning of the exception to sec.
 74 of the Contract Act.

(2) The bond was one given for the performance of a public duty or
 act in which the public were interested and was not one given “ under the
 provision of any lease ” there being no section in the Act authorising or
 requiring the giving of such bond.

(3) That the clause authorizing the plaintiff to put the defendants
 ‘ Gutta ’ upto auction did not preclude the plaintiff from recovering under
 the contract.

(4) That the penal clause of the Local Boards Act sec. 162 (c) and 162
 did not preclude the plaintiff from recovering against the defendant under
 the contract.

(5) That the suit for recovery of the penalty mentioned in the clause
 was governed either by art. 68 or 115 of the Limitation Act and not
 by art. 6.

(6) That the amount of Rs. 50 could not be said, under the circumstan-
 ces to be exorbitant, though the matter was one for the lower court to
 determine.

(7) That under sec. 74 it was not necessary for the plaintiff to prove
 any actual damage or loss:

Held, also:—That even assuming the policy of the English law to be not to allow the person not injured to seek civil redress when he has not endeavoured to bring the felon to justice, the principle is not applicable in the circumstances of the case.

White C. J.

The President of the Taluka Board Kundapur v. Lakshminarayana 2 M. L. T. 461,

Madras Rent Recovery Act (Act VIII of 1865)—*Exchange of patta and muchilika not necessary between zamindar and inamdar to enable former to take proceedings under Act.*—No exchange of patta and muchilika is necessary to enable a zamindar to take summary proceedings against an inamdar as his tenant under Madras Act VIII of 1865, even when such inamdar has the kudivaram right in the land held by him.

Benson & Boddam & J. J.

Zamindar of Challapalli v. Kuchi Jaggayya 30 Mad., 493=2 M. L. 462.

—————**S. 11, Cl. 2, 3, 4**—*Proviso*—Contract to share benefit of tenant's improvement—Title to waste lands—Judgment in previous suit—Evidence—Decision of a Revenue Court as to propriety of patta—*Res judicata*—Appeal, effect of. In a suit between the Zemindar and the mirasidars of a village where in the ownership of the waste lands was in question.

Held, that a judgment in a prior suit between the Zemindar and some mirasidars in which it was decided that the waste lands in the village were the property of the mirasidars was relevant under S. 13 of the Evidence Act *Sivantha v. Nathi* 26 Mad. 371, explained.

The effect of a party preferring an appeal is to reopen the decree appealed against, and it is competent to the parties to agree that the case should be remanded for the trial of fresh issues even on points not raised by the appellant in the grounds of appeal.

The decision of a Revenue Court as to the property of a particular condition in a patta, when such decision does not proceed on any considerations peculiar to the particular case, is *res judicata* between the parties in subsequent suits in the same Courts just as much as the question whether the relation of landlord and tenant exists between the parties unless subsequent events may arise to determine the landlord's title or render the condition in a patta inapplicable.

S. 18 of the Rent Recovery Act contemplates rents being fixed by contract, and it is only in the absence of a contract express or implied that resort is to be had to the method of fixing rent specified in Clauses 2 and 3,

Cl. 4 also reserves the landlord's right to contract on any terms he likes in the absence of any special rights held by the tenants.

Payment of rate over a long series of years would *prima facie* be presumptive evidence of a contract.

Benson & Wallis J. J.

———Ss. 41, 43, 69—*Judgment*—*Decision of Collector setting aside on order for ejectment under S. 41, is a 'judgment' and appealable as such.*—The term 'judgment' as used in Madras Act VIII of 1865 must be held to include all decisions of a Collector determining the rights of parties. Where a tenant, ordered to be evicted under section 41 of the Act, applies to the Collector to set aside the order evicting him the decision of the Collector on such application is a 'judgment' whether the application of the tenant is considered as a plaint in a summary suit to set aside the improper eviction or as an appeal under section 43 or not, and an appeal lies against such judgment under section 69 of the Rent Recovery Act. Such right of appeal exists in favour of the landholder as well as of the tenant. *Madai Thalavoy Kummarasamy Mudaliyar v. Nallakannu Tevan*, (5 M. H. C. R., 289), not approved. (F. B.)

Dontaraju Subbarayudu v. Nekkalapudi Lingayya 30 Mad., 473.

———Ss 85—*Section 85 empowers receivers to sue under the Act and also makes them liable to be sued without leave of Courts*—A receiver appointed by Court is a public officer holding lands in attachment within the meaning of section 85 of Madras Act VIII of 1885. The section imposes on him the duty of granting pattas to tenants and the liability to be sued under the Act for failure to do so. No leave of Court is necessary to enforce the statutory right of suing such receiver conferred by the section.

Benson & Wallis J. J.

Receiver of Ammayyanakanur Zamin v. Suppan Chetty 30 Mad., 505=3 M. L. T. 7.

Natesa v. Venkatrama, 2 M. L. T. 455.

———*Attachment for more than the amount due validity of*—Held that an attachment for a larger sum than amount actually due as rent does not on that ground become invalid, when the puttah tendered is found to be a correct one, but is good to the extent of the rent found to be due on a correct calculation.

Benson & Miller J. J.

Periakaruppa v. A. P. Miller, 3 M. L. T. 29.

Madras Rent Recovery Act (II of 1864) Ss. 36, 40—Sale of immovable property under—Possession, application for, by purchaser—Limitation Act, Arts. 178, 179. Where immovable property has

been sold under S. 36 of the Revenue Recovery Act, an application by a purchaser for delivery of possession under S. 40 of the Act is governed by Art. 178 and not by Art. 179 of the Limitation Act. *Susya v Aiyakannu* 29 Mad. 529, F. B., applied. *Chembar Raman v. Patinhateeri*, (appeal against appellate Order No. 27 of 1882), *Gnana Sambanda v. David Nadar* 14 M. L. J. 433, explained. *White C.J & Miller J.*

Sambasiva v. Pauchnada, 3 M. L. T. 19.

Mahomedan Law.—*Wife's death in husband's lifetime—Deferred dower—Right accrues to heirs of wife after her death—Cause of action not joint—Suit by one heir Other heirs, necessary parties.* When a Mahomedan wife who has not been divorced by her husband die during the husband's lifetime, the right to sue for her deferred dower accrues for the first time to her heirs.

The cause of action is not a joint one and any of the heirs may sue the husband separately for his or her share.

But in such a suit the presence of all the heirs is necessary in order effectually and completely to adjudicate upon the claims of the several heirs.

Where in a suit by one such heir, one of the remaining heirs was not made a party defendant till after the period of limitation applicable to the suit had expired.

Held, that S. 22 of the Limitation Act was no bar to the suit, as no relief was sought against the latter and her presence was only required for the effectual and complete adjudication of the claims of the several heirs.

Seemle—Even if the interest of the heirs of the deceased was a joint interest, as the Defendant, the husband was himself one of the heirs, the cause of action must be taken to have been split up.

Brett & Mookerjee J. J.

Mahamed Ishaq v. Sheikh Akramul, 12 C. W. N. 89:

———*Shias—Succession—Childless widow—Rights of widow in possession in lieu of dower—Transfer of Property Act, section 6 (d)—Mortgage—Adverse possession—Under the Imamia Law a widow, if she has no issue alive at her husband's death does not inherit any of her husband's immovable property.*

A Muhammadan widow in possession of immovable property of her deceased husband in lieu of her dower has only a lien on the property to secure payment of the dower debt; she has no transferable interest in the property.

A mortgagee cannot during the continuance of the mortgage by the act of his, render his possession adverse to the mortgagor.

The power to appoint a guardian *ad litem* is inherent in every court of civil jurisdiction. Where therefore a Shia Muhammadan lady had been appointed by a civil court guardian *ad litem* of her infant children, it was held that the appointment must be presumed to be valid and that as sale in execution of the decree obtained in such a suit was binding on the minors.

Knox C. J. & Dillon J.

Muzaffar Ali Khan v. Parbati, 29 All 640.

Merger—Decree in civil suit for rent bars subsequent summary proceedings under Rent Recovery Act by distress—*Rent Recovery Act Madras, Ad VIII of 1865, S. 39*—A cause of action merges by reason of the judgment of a Court of record in a suit brought on such cause of action and without the judgment being satisfied. *King v. Hoare*, 13 M. & W., 494, referred to. A claim for rent is a single cause of action although it may be recovered either by distress or by suit, and when the landlord sues for the rent in a Civil Court, such claim merges in the judgment passed in such suit and can no longer be distrained for under the Rent Recovery Act.

Benson & Wallis J. J.

Chinnappa Ramthan v. Fischer. 30 Mad., 495.

Mortgage T. P. Act, Section 91—Redemption—Who may redeem—Perpetual lessee—In a suit for redemption of a mortgage the plaintiff was a perpetual lessee of the mortgaged premises from the mortgagor, holding under a lease granted upon payment of a premium of Rs. 800, with a yearly rental of Rs. 40 odd, by the terms of the lease the lessee was not liable to be ejected, even for non-payment of rent, while, if the title of the lessors proved defective, the lessee was entitled to a refund of the premium.

Held that the lessee was under the above circumstances entitled to redeem.

Griffin J.

Raghunandan v. Amlukasing 29 All 679.

Mortgage—Redemption—by son of the mortgagor before expiry of term fixed in mortgage—Clog—Long term is not clog on redemption—Where a mortgage is entered into for a long period, in good faith, the next heir to the mortgagor cannot claim to redeem the mortgage before the expiry of the period fixed, on the ground that the long term amounted to clogging the equity of redemption.

Johnstone & Shahdin J. J.

Puran Singh v. Kesar Singh, P. L. R., 1907 No. 119

Negotiable Instruments Act XXVI of 1881, Sections 4 and 13
—*Negotiable instrument—Promissory note made payable to a specified*

person is not negotiable—Transfer of such promissory note by endorsement—*Held*, that a promissory note made payable to a specified person not being a negotiable instrument cannot be transferred by mere endorsement, and the transferee by mere endorsement is not competent to sue thereon. Robertson J.

Parfitt v. Chain Sukh, P. L. R. 1907 No. 103.

Patwari's rates and cesses—*Plaintiffs suing as assignees of Government revenue whether they can recover*—In a suit to recover Patwari's rates and cesses paid by the plaintiffs on behalf of the defendant, a zamindar. *Held*, that they could recover the said rates and cesses in the same manner as in a suit for arrears of revenue and a suit for their recovery, lies as a suit to recover arrears of revenue. As for these rates the persons with whom the mahal was settled incurred a joint liability, and so, the plaintiffs must be deemed to have paid them as co-sharers. Griffin J.

Narain Singh v. Keshu Das, 4 A. L. J. 816

Pleader and client—Agency—Relation between co-mortgagors one of whom a pleader, if fiduciary—Accountability—Settled accounts—Suit to falsify—Specific averment of errors necessary—Changing suit for accounts into Suit to falsify settled accounts—Procedure in account suits—A person does not become the agent of another merely because he gives him advice in matter of business. The essence of the matter is that the principal authorizes the agent to represent or act for the principal in bringing or aid in bringing him in contractual relation with a third person, that is to say there must be a recognition of the derived authority of the agent

A solicitor who has been employed as such in a transaction for investment of money may be liable for negligence in lending money on insufficient security. But the liability varies with the extent of the part he is employed to take in the transaction.

Plaintiff jointly with one R, a pleader advanced money on what turned out to be insufficient security. It was, however, found that the plaintiff knew and approved of the security at the date of investment.

Held—That the plaintiff could not call upon R to recoup him any loss he sustained by reason of the insufficiency of the security, even though he might have obtained the advice of R as pleader on entering into the transaction.

The requisite for making an account a settled account depends upon the circumstances of each case and the mode of dealing between the parties.

Held—That the plaintiff could not after the suit had been tried out on that footing be allowed to convert the case into one for reopening of

accounts on the ground of errors contained therein. Procedure in account suits indicated, and that adopted in the present case condemned.

In a suit for account if the liability to account is denied by the defendant, the question of accountability is to be tried first. It is only after an adverse decision against the defendant upon this question that he may be called upon to render an account. *Hairi v. Krishna* I. L. R. 14 Calc. 147 distinguished.

Mookerjee & Holmwood J. J.

Mohesh v. Radha Kishore 12 C. W. N. 28

Practice—Court—Decree—No specific direction as to accounts—Decree contemplating accounts—Direction can be given at a subsequent stage. Where there is no existing direction as to accounts in a decree, but the decree does contemplate an account (which direction ought to have been incorporated in the decree when passed), it is competent to the Court at any state of the proceedings to direct necessary inquiries or accounts to be made or taken.

Davar J.

Sir Jehangir v. The Hope Mills Ltd. 9 Bom. L. R. 1380.

—Death of a proforma defendant—appellant—Abatement of appeal.

Death of *pro forma* defendant who had appealed along with other defendants who could have maintained their appeal independently of the said *pro forma* defendant does not serve to abate the appeal of other defendants.

Bannerji & Aikman J. J.

Ashiq v. Asghari, 4 A. L. J. 809.

—Motion for contempt—Execution of a decree—Civil Procedure Code, S. 244. Where there is a genuine dispute between the parties about the right way of executing a decree, it should be formally dealt with under S. 244 of the Civil Procedure Code, and not brought indirectly and incidentally, before a Judge on a motion for contempt.

Peaman J.

Jamsetji v. Sorabji, 9 Bom. L. R. 1361.

—Exclusion of question by a lower Court—Form of question to be stated—interference of superior Court. A party asking for redress at the hands of an appellate or revisional Court on the ground that the court below has wrongly excluded a question which the party wished to put to a witness, must state the form and substance of the question proposed to enable the appellate or revisional Court, as the case may be, to determine whether the particular question in each case was so framed as to make it admissible under the I. E. Act, 1852.

Cahndavarkar & Knight J. J.

Emperor v. Narayan 9 Bom. L. R. 1385.

—Copies of judgment, order or decree sought to the revised

not necessary to be filed—*Held*, that, no copy of order or judgment sought to be revised, is by law rendered necessary as an annexure to the petition of revision.

Johnstone J.

Mehar Singh v. Gurbachan 2 P. W. R. 463.

———*Suit for possession—Failure of cause of action—Proper decree to be made in such a case—Possibility of media concludendi being the same in other action gives the Court no power to pronounce upon them—Where the plaintiff claimed to have possession of there mother's property on the ground that she was dead, and the Court held that it was not proved that the lady was dead, the inevitable inference would seem to be that the suit should be dismissed. The mere circumstance that some some of the media concludendi might be the same in other other actions does not vest the Court with any right or duty to pronounce upon them in a suit which has gone by the board because of the failure of the ground of action.*

P. O.

Mussummat v. Jogeshwar 7 C. L. J. 44.

Pre-emption—Execution of decree—Decree for pre-emption—Held that a decree can not be regarded as having become final before the date on which the period from preparing an appeal expires. *Sheikh Erwaz v. v. Mokuna Bibi* (1 All., 132) and *Ram Sahai v. Gaya* 7 All., 107, followed.

Aikman J.

Gopaldas v. Mamman Kunwar, A. W. N., 1908, 13

———*Vicinage—Mohla Jalotian Lahore City—Two houses adjoining one another sold together, one adjoining vendor's house—One edifice divided into two houses—District properties—Pre-emptor not bound to take over whole bargain—Held*, that custom of pre-emption on the ground of vicinage exists in Mohalla Jalotian Lahore City as regards house property.

Held, also that where two houses adjoining one another are sold together one of which adjoins the vendee's house at the back and the other adjoins the house of the pre-emptor, who is a next door neighbour of the vendor, the pre-emptor is entitled to get the house adjoining his.

Held, further that in the case of dividing one edifice of one house into two houses these are to be considered two distinct properties for the purposes of pre-emption and when they are sold together the pre-emptor, whose right extends to one of them only, is not obliged to take over the whole bargain.

Johnstone & Hurry J. J.

Uttam v. Lala, 2 P W. R., 469.

—————*Wajib-ul-arz—Interpretation of—Intiquat—Conditional sale*

—A *Wajib-ul arz* regarding a custom of pre-emption gave a right of pre-emption in case of any *Intiquat* of property in the village. *Held* that a suit for pre-emption in case of a conditional sale was maintainable.

Richards J.

Ram Narain v. Ganga Ram 4 A. L. J. 314.

—————*Pre-emption—Wajib-ul-arz—Construction of document—*

“Shurkayan-i-shikmi.”—The *wajib-ul-arz* of a village (*Kandhla*) in the *Muzaffarnagar* district gave a right of pre-emption, first to *shikmi* co-sharer *Shurkayan-i-shikmi*, secondly, to share-holders descended from a common ancestor *Shurkayan-i-jaddi*, and thirdly, to *khewat-ddrs* in the *mahal* *Khewat-daran-i-mahal*. The *mahal* was divided into seven *pattis* and the land in dispute was situated in *patti* *Khail*, *thok* *Bhuria*. The pre-emptors were co-shares in *patti* *Khail*. One of the vendees was a co-sharer in the *mahal*, but not in *patti* *Khail*. *Held* that, regarding the whole context of the *wajib-ul-arz*, the expression *shurkayan-i-shikmi* was intended to denote relatives by blood and not co-sharers in any sub-division of the *mahal*, and the plaintiffs were not therefore entitled to pre-emption.

Stanley C. J & Burkitt J.

Singh v. Mubarik-un-Nissa, A. W. N. 1008 16.

Pro-note—*Suit on the unendorsed note by payee's brother—Chose in action—Assignment—Maintainability of suit—Transfer of Property Act, Ss. 130 and 137.* A brought a suit upon a Pronote without any endorsement of the same from the brother who was the payee alleging that it was made payable to the managing member of his family (i. e. his brother) and that it was allotted to his share on partition. *Held*, that as the pronote was not endorsed to A, he could not sue. *Subba v. Ramaswami*, 30 Mad. 88, followed.

The contention that the pronote having fallen to A's share on partition, he is entitled to sue as the assignee of the chose in action, was held untenable as the suit was not upon the chose in action, but upon the note and there was no assignment in writing as required by Ss. 130 and 137 of the Transfer of Property Act. *Mahomed v. Renga*, 24 Mad. 654, distinguished.

Benson & Wallis J.

Arunachella v. Subba, 3 M. L. T. 7.

Punjab Tenancy Act, S. 77—(3) (d)—*Jurisdiction of Civil and Revenue Courts—Landlord and Tenant—Occupancy rights—Suit for declaration that plaintiff is occupancy tenant having exchanged his*

land with the occupancy tenant—The question of jurisdiction must be settled with reference to the plaint—106 P. R., *referred to*.

A suit by a person claiming to be an occupancy tenant of specific land for a declaration that he is occupancy tenant of the defendant, having exchanged his original holding with the occupancy tenant of the land in suit falls within Section 77 (3) (d) of the Punjab Tenancy Act, and is therefore cognizable by Revenue Courts only.

Reid C J.

Attar Singh v. Rala Singh, P. L. R. 1907 No. 110.

—————**Sc. 77—(3) (i) (p)**—*Jurisdiction of Civil and Revenue Courts—Suit for land-revenue—Suit for mortgage money advanced to a person to pay land-revenue—Es'oppel—Plaintiff estopped from questioning jurisdiction of Court in which he filed suit*—Clause (p) of Section 77 (3) of the Punjab Tenancy Act must refer to suits for sums payable on account of land-revenue as such, that is to say, suits for land-revenue or arrears of land-revenue by a person entitled to receive it. It cannot include a suit for money advanced to a person to pay land-revenue and not repaid by the borrower.

The terms of Section 77 (3), which oust the jurisdiction of the Civil Courts, should be construed strictly. Clause (i) must be taken to include suits *ejusdem generis* with those which are mentioned above it, and be confined to suits between parties *qua* landlord and tenant. It cannot be held to include a suit, the claim in which arises out of a contract of mortgage merely because between the mortgagor and mortgagee there subsists also the relationship of landlord and tenant. The claim in the suit must be directly referable to the lease or the conditions on which the tenancy is held.

Robertson & Chitty J. J.

Jamatmal P. L. R. 1907 No. 98.

Railways Act (IX of 1890) Ss. 77 and 140.—*Goods lost in transit—Notice of Claim—Sufficient notice.* Notice of claim for goods lost in transit given to Railway Company A, with whom they were originally booked is not sufficient notice within Ss. 77 and 140 of the Railways Act to Railway Company B, on whose line the goods were subsequently lost.

Rampini C. J. & Sharfudin J.

Tilak chand v. The East India Railway Co, 12 C. W. N. 165.

Res Judicata—*In rent suits—Objection to terms of patta not taken in previous summary suit cannot be taken in suits for subsequent year.* Where the tenant in a summary suit brought against him to enforce acceptance of patta, does not object to some stipulations in the patta, and the judgment directs him to accept a patta containing such stipulations,

such judgment is a bar to the tenant setting up the same objections in a suit to enforce patta for a subsequent year. *Venkatachallapati v Krishna* 13 Mad. 287, followed. Payments of a voluntary nature cannot be included in the patta unless they constitute a charge on the land or are payable with rent according to established law or usage.

Benson & Wallis J. J.

Sellapa Chettyar v. Velayutha Tevan, 30 Mad. 498=3 M. L. T. 17.

Registration Act Section 17 (b)—*Partition deed—Award*—Where co-sharers by an agreement consent to partition their joint immovable property of the value of Rs. 100 or upwards, and divide into lots and at their request an arbitrator appointed by them assigns the lots to the co-sharers and executes an award on the back of the agreement specifying the assignment of the lots—

Held, that such an award is compulsorily registrable and is inadmissible in evidence for want of registration. *Johnstone & Rattigan J.*

Azimat Singh v. Kalwant Singh, P. L. R., 1907 No. 111

Small Cause Courts Act (Provincial) Ss. 16, 32 (2)—*Civil Procedure Code, S. 646 B—Institution of a suit before a Munsif exercising Small Cause Court powers up to a certain value—Trial by his successor invested with higher powers.* Where a suit for recovery of a sum of Rs. 70 was instituted in the Court of a Munsif exercising Small Cause Court powers up to Rs. 50 and subsequently during the pendency of the suit the Munsif was transferred and the substantive Munsif who succeeded him had powers of a Small Causes Court up to Rs. 100.

Held, that the suit should be tried as if the powers of the Court remained the same as they were when the suit was instituted.

Rampini C. J. & Sharfuddin J

Mahima Chandra v. Kali Mandol, 12 C. W. N. 167.

Succession Act, S. 3.—*Construction of—Will—Bequest to daughter—Absolute estate.* Where in a Will a legacy was given in the following words—"On my death, my daughter, Surjamoni, who has got sons, and who is a resident of.....shall possess as owner and possessor of all the rights of gift, sale, etc, in respect of all my property moveable and immovable and on the death of any aforesaid daughter, the sons born of her womb will equally own all my property.

Held, upon a construction of the Will, that it was the intention of the testator to give Surjamoni an absolute estate.

Ghose C. J. & Caspersz J.

Gobinda Chunder v. Benode Chunder 12 C. W. N. 44.

Succession Certificate Act, S. 4.—*Application by heir of mortgagee for supplementary decree—Succession certificate, if necessary—"Debt"—Transfer of Property Act, S. 90.* Where after a preliminary decree had been made in a mortgage suit, the mortgagee died and his sons got themselves substituted on the record and an order absolute was made in their favour, but the proceeds of the sale of the mortgaged property proving insufficient, they applied for a personal decree for the balance under S. 90, Transfer of Property Act.

Held, that until the applicants obtained a certificate under the Succession Certificate Act no such decree could be made in their favour.

Mookerjee & Caspersz J. J.

Sahadev v. Sheikh Sakhawat, 12 C. W. N. 145.

Suit—Maintainability of—Sale in execution of decree on simple mortgage—Purchaser at such sale cannot maintain suit for possession against purchasers of the equity of redemption subsequent to mortgage but prior to suit, who were not joined to parties—A, who held lands in kanom tenure, executed a simple mortgage on them in favour of B and subsequently sold the properties to C. Subsequent to such sale B brought a suit on his simple mortgage against A without making C a party and obtained a decree of sale. D became purchaser at the sale held in execution of a decree. In the suit by D against A and C for possession of the properties purchased at the Court sale:—*Held*, that D was not entitled to sue for possession, as all that passed to him at the sale was the right of B as a simple mortgagee. *Hargu Lall Singh v. Gobind Rai*, 19 All., 541 followed.

Boddam C. J. & Miller J.

Enkholi Kizhakkikandy v. Vallath Koylil Unnoli 30 Mad. 500.

—————**For declaration of right to receive fees as “Chowdhris” of certain Bazars—Suit not maintainable—**The plaintiffs sued for a declaration that they were the “Chowdhris” of the bazars in the villages Muhammadabad Ghona, Khairabad and Behna and that the defendants were not the “chowdhers” of the said bazars and were not entitled to take chowdhri’s dues. *Held* that such a suit was not maintainable. *Bhinuk Chowdhree v. The Collector of Jaunpur* N. W. P. H. C. Rep., 1867, p. 271, *Behari Lall v. Baboo*, N. W. P. H. C. Rep., 1867, p. 80, and *Ram Deehul v. Chukhoo*, N. W. P. H. C. Rep., 1869, p. 291 followed.

Bannerjee & Aikman J. J.

Barsati v. Chamru 29 All, 683

Transfer of Property Act, S. 55—Immoveable property, sale of—Purchase—Money not paid—Vendee’s right possession—*Held*, that the vendee of immoveable property, is entitled to possession of the property when the conveyance has been duly effected even though the purchase money has not been paid to vendor. The unpaid vendor can retain the title-deed, and is also entitled to charge upon the property for the unpaid purchase money, but has no right to retain possession of the property conveyed.

Held, that his possession was not adverse to the vendee when vendor, after conveyance, got the pattah issued in the name of the vendee. *Annaud v. Alijamin* (11 Cal. 229) referred to.

Arnold White C. J. & Miller J.

Velayuda v. Govindasami 3 M. L. T. 110

—————**Sec. 85—Parties claiming adversely to mortgagor, if necessary parties—Contract Act sec. 23—Illegal contract—**Sec. 85 of the Transfer of Property Act does not require persons who claim adversely to the mortgagor to be made the parties. *Mon Mohini v. Parbati Natn* I. L. R. 32 Cal. 746 followed.

Mitra & Caspersz J. J.

Jogo Mohan v. Doudoong 12 C. W. N. 94.

THE LAW

1st MAY

DIGEST OF RECENT

Administrator pendente, l
rence—Executor de son tort—Appl
of the appointment of an administr
property of a Hindu, if he continu
in the same way as he did prior t
to an end he can be sued as a *quod*

Macleod

Kshitist v. Radhika 12 C. W.

Adverse possession—Mortga
gee's rights—Rights of co-mortgag
possession by a person holding the
of some person other than the tr
to immediate possession. Where
were not entitled to immediate pos
a period of 12 years he does not ac
acquires the mortgagee's rights wh
only those rights vest in him.

When a mortgagor acquires st
his co-mortgagor can recover posse
him.

Iswardar v. Ahmed 5 A. L. J. 8

—*Effect of entry and p*
title of one co-owner—The entry an
non title of one co-owner will not
but will ordinarily be held for the
co-owner is in itself rightful and d
possession of a mere stranger.

A silent possession accompanied by no act, which can amount to an ouster or give notice to his co-tenant that his possession is adverse, ought not to be construed into an adverse possession; mere possession, however exclusive or long continued, if silent, cannot give one co-tenant in possession, title as against the other co-tenants.

In a suit for joint possession by one of the co-owners, it is for the defendant to show not merely that he has been in sole occupation of the disputed lands but also that thereby the assertion of a hostile title and notice thereof, either direct or to be inferred from notorious acts and circumstances.

To prove title to land by adverse possession for the statutory period, it is not sufficient to show that some acts of possession have been done, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of Limitation.

In order to defeat a title by dispossessing the owner acts must be done which are inconsistent with his enjoyment of the soil for the purposes for which he intended to use it.

The doctrine of constructive possession applies only in favour of a rightful owner and should not as a rule be extended in favour of a wrong doer, whose possession must be confined to lands of which he is actually in possession. *Mohini v. Prowoda* 24 Cal. 256 followed.

Mookerjee & Caspersz J. J.

Jogendra v. Baldeo 6 C. L. J. 735

Agra Tenancy Act, s. 22—Occupancy holding—Succession— Under the Tenancy Act of 1901 the personal law of the parties concerned is no longer applicable to the case of succession to an occupancy holding descends to all the male descendants in the male line of descent of the last owner, without exclusion by the nearer of the more remote.

Stanley C. J. & Burkitt J.

Bhura v. Shahar-ud-din, A. W. N., 1908, 37 = 5 A. L. J. 771

——— **Ss. 63, 79, 167—N. W. P. Rent Act ss. 36, 96—Res Judicata—** An occupancy tenant having executed a *zar-i-peshgi* lease of his holding relinquished the same in favour of the zamindar. The lessor sued for and obtained a declaration that the relinquishment was void as against them. Meanwhile, however the zamindar applied under Act No. XII of 1881 and obtained an order, which was confirmed by the Commissioner. Upon the coming into force of Act No. II of 1901 the zamindar further sued in the Revenue Court for ejectment of the *zar-i-peshgi* les-

sees and obtained a decree, the Revenue Court finding that the status of the *sar-i-peshgi* lessees was that of sub-tenants of the zamindar. The lessees then sued in the Civil Court asking to be restored to possession under the terms of their lease.

Held that the suit was not maintainable having regard to the decisions of the Revenue Court.

Knox C. J. & Dillon J.

Balwant Singh v. Girdhari Lal A, W. N., 1908, 32=5 A. L. J. 30

———**S. 197**—*Which party a tenant—Question of proprietary title*—The question which of the two parties is a tenant of a specified land is not a question of proprietary title. *Chittar Sing 1906 A. W. N. 247* overruled.

Knox & Aikman J. J.

Niranjan v. Gajadhar 5 A. L. J. 71.

Appeal—Estoppel—Execution of a decree for a part of the claim decreed no bar to prosecuting the appeal as regards remainder of the claim dismissed—*Held* by the Full Bench that a plaintiff, who, after obtaining a decree for a part of his claim, has appealed as regards the part dismissed, is not debarred from prosecuting his appeal because he has begun to execute the same decree.

(1) *Mohammad Khan v. Fida Mahomed* (Civil) No. 82 of P. R. 1808 overruled.

(2) *Feroze Din v. Ghulam* (C. A. No. 695 of 1905 distinguished.)
F. B.

Raghu Mal v. Bandu 2 P. W. R. 369.

Bengal Tenancy Act, S. 184 (1)—Plea of limitation not set up—Duty of Court to dismiss suit—Under sec. 184 of the Bengal Tenancy Act, it is obligatory upon the Court to dismiss the suit on the ground of limitation, although limitation has not been pleaded.

Stephen & Mookerjee J. J.

Abdulullah v. Asraf 7 C. L. J. 152.

———**S. 188—Co-sharer land lords—Separate collection—Right of sharer to sue for whole rent making co-sharers—Defendants—"Required or authorised to do" under the act—Filing of suit—General principles of legal procedure**—Agreement either expressly proved or implied by the conduct of the parties may establish the right of a co-sharer landlords to sue separately for the shares of rent receivable by them. But such arrangement merely affects the right to sue separately for rent, and in no other respect modifies the term of the holding. The right to bring

the tenure to sale for arrears of rent remains intact, as also the right of one sharer to sue, making co-sharers defendants when they will not join as plaintiffs

The filing of a suit is not a thing which the landlord is, under the Bengal Tenancy Act, required or authorised to do; and sec. 189 of the Bengal Tenancy Act is no bar to a sharer (suing under the general rules of legal procedure) for the whole rent of the tenure making his co-sharers refuse to join as plaintiffs, defendants in the suit. (P. C.)

Roja Pramadu v. Raja Raja Ramani 12 C. W. N. 249=7, C. L. J. 139.

———**S. 193.—Limitation.** A grant of the trees as distinct from the land in which the grantor reserved every forest right except the one which is granted, is nevertheless the grant of a forest right within the meaning of S. 193 of the Bengal Tenancy Act; and a suit for the recovery of money payable in respect of such forest rights is governed by the three years rule of limitation laid down in Art. 2, Cl. (b) of the Act.

The provisions of the Bengal Tenancy Act applicable to suits for the recovery of arrears of rent are, having regard to the phraseology of S. 193 of the Act, designedly made applicable to suits for the recovery of sums that are not rent; and money payable in respect of forest rights is not rent within the meaning of S. 3 (5) of the Act. *Stephen & Mookerjee J. J.*

Abdulullah v. Asraf, 7 C. L. J. 152.

Bombay Municipal Act (Bom. Act III of 1888), S. 33.—Election of Councillor, validity of—Applicant's right to question election—"Election," meaning of—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code, S. 11. Under S. 33 of the City of Bombay Municipal Act, an applicant can question the election of every candidate on the ground that the election as a whole was invalid, for the section, after specifying two permissible grounds of objection, provides that the validity of any election may be questioned for any other cause, and these words are wide enough to cover the ground of objection urged in this case.

It is clear that the word "election" in the section is designed to express something wider than a legally valid election, and the words used are consistent with the view that an election which in fact took place under conditions that made it possible that there should be a valid election can be questioned.

Under S. 33 the Chief Judge of the Small Cause Court has juris-

diction to determine the validity of a contested election. The High Court has no jurisdiction to entertain such a suit.

Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any.

The jurisdiction of the Courts can be excluded not only by express words but also by implication, and there certainly is enough in S. 33 of the Municipal Act for this purpose.

Semble.—If the High Court has jurisdiction there might be a conflict between the view of the High Court and the orders of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail.

Jenkins C. J. & Batty J.

Bhaishankar v. The Municipal Corporation of Bombay, 31 Bom. 604.

Chowkidari Act (VI B. C. of 1878), sec 51—Presumption of Chakran land-lessee from Chokidar, rights of—When Chowkidari land is resumed and transferred by the Collector to the zamindar the interest of the Chowkidari in the land, and along with it, all rights created by him in favour of others, cease.

Sec. 51 of the Chowkidari Act, does not save rights created by the Chowkidar refers to contract made by the zamindar in respect of the village in which the Chowkidari land or any portion of it is situate.

Mitra & Caspersz J. J.

Krishna Kinkar v. Mahanto Bhaguban 12 C. W. N. 161.

C. P. Tenancy Act, 1818, S. 41 (4)—Meaning of “devolves”—Divisibility of holding. A holding governed by the Tenancy Act is one and indivisible in the sense that the landlord cannot be compelled to recognize a partition made by the tenants. The use of the word “devolves” in S. 41 (1) of the Act indicates that where a Hindu was, originally the sole tenant, an absolute occupancy holding will pass on his death by inheritance” in the strict sense of this term, i. e. in consequence of the death and not under the Hindu Law applicable to joint family property. *Anant Ram*, 4 C. P. L. R. 57; *Chudaman*, 13 C. P. L. R. 127, followed.

Pancham Singh, 3 Nag. L. R. 182.

Civil Procedure Code, S. 13.—*Court of jurisdiction competent—Revenue Court—Dismissal of suit for enforcement of acceptance of patta—No bar to a suit for rent on the basis of a tender of proper patta—Madras Act—Rent Recovery Act, Ss. 9–10.* The dismissal of a suit under S. 9 of the Rent Recovery Act to enforce the acceptance of a patta is no bar to a Civil suit for rent due for the same *fasli*, on the basis of a tender of a proper patta. The Revenue Court is not a Court of jurisdiction competent to decide the suit for rent and its decision cannot operate as *res judicata* in a suit for rent. Wallis & Miller J. J.

Kidambi v. Lakshmi Doss, 17 M. L. J. 601.

———**S. 13, Expl. II.**—*Successive purchase of the same land at two execution sales—Suit to set aside one such sale—Purchaser's defence—Whether he is bound to set up title acquired at the other sale—Ground of defence which "ought to" have been taken.* A purchased village S in execution of a decree obtained by him against C in the Small Cause Court. Subsequently A through B instituted a mortgage suit against C and in execution of the decree obtained therein purchased some lands in the same village. S. C. instituted two suits, one to set aside the sale in execution of the Small Cause Court decree and the other to set aside the decree and sale in the mortgage suit. The latter suit was dismissed for default, but the former succeeded. In this suit A did not set up as a ground of his defence the title obtained by him at the mortgage sale.

Held, that A was bound to do so, and a suit by A to recover the lands in villages purchased at the mortgage sale is not *res judicata* under Expl. II of S. 13 of the Civil Procedure Code.

Per Brett J.—Expl II of S. 13 of the Civil Procedure Code refers to the title litigated in the former suit as distinguished from the relief claimed. When several independent grounds of action are available, a party is not bound to unite them all in one suit though he is bound to bring before the Court all grounds of action available to him with reference to the title which is made the ground of action. This rule equally applies to the converse case of a Defendant when pleading in his defence. *Pittapur v. Venkata*, 26 Mad. 760 and *Ramaswami v. Vithinath*, 26 Mad. 760 relied on. Brett & Woodroffe J. J.

Mahabir v. Purbhu Nath, 12 C. W. N. 292.

———**S. 20.**—*Jurisdiction of a Court to entertain a suit.* S. 20 of the C. P. Code enables a court to stay a suit upon application made for that purpose. It does not empower the Court to entertain a suit which otherwise, it would have no jurisdiction to entertain,

Banka Mal v. Sham, 5 A. L. J. 88.

———**Ss 108, 560, 582**—*Power to set aside ex parte decree after appeal is filed.* After an appeal is filed against the decree of a lower Court, the power to set aside the original decree on an application under s. 108 of the Code of Civil Procedure becomes vested in the Appellate Court by virtue of S. 582 of the Code of Civil Procedure.

Benson & Wallis J. J.

Sankara v. Subraya, 30 Mad. 535.

———**S. 158.**—*Holiday—Hearing fixed with the consent of parties—Failure of plaintiff to attend.* The hearing of the case was fixed on a holiday with the consent of the parties to suit the convenience of the plaintiff's pleader. On the date fixed the plaintiff's pleader declined to attend the Court, on the ground that the day was a holiday and the Court, acting under S. 158 of the Civil Procedure Code, delivered judgment in the case.

Held, that the action of the Court was not open to objection.

Kensington & Chitty J. J.

Bhagwan Dass v. Har Parshad, P. L. R., 1907, No. 92.

———**S 211.**—*Mesne profits—Khamar land—Interest.* In determining the amount of mesne profits payable in respect of Khamar land, 5 per cent on the value of the actual produce was held to be a sufficient allowance to meet the costs of supervision and any other incidental charges for which a proprietor who is not an ordinary cultivator of his Khamar land may be liable.

Principle upon which mesne profits of Khamar land should be assessed discussed. Interest as forming a part of the mesne profits or damage cannot be allowed for any period subsequent to that limited by S. 211, C. P. Code.

Interest at 6 per cent and not 12 per cent was allowed on mesne profits after possession was delivered.

Mitra & Caspersz J. J.

Ijatulla v. Chandrr Mohan, 12 C. W. N. 285.

———**Ss. 232, 233**—*Transfer of money decree—execution proceeding by transferee—Transfer of Property Act, Ss. 67–99.* A transferee of money decree cannot in execution proceedings bring to sale property belonging to the judgment debtor and which has been mortgaged to the original decree-holder. He can only do so by instituting a regular suit under S. 67 of the Transfer of Property Act. *Chagan v. Laxman*, 9 Bom. L. R. 723 followed. *Baph Lal*, 7 All. 450 dissented from.

Benson & Wallis J. J.

Jivaratnam v. Shrinivasu, 3 M. L. T. 107.

———**S. 232, Cl. (b)**—*Decree for money—Assignment in writing—Transfer to one of the judgment-debtors—Execution proceedings by the transferee—Contribution suit.* It was directed by a decree that N should pay Rs. 90 and Rs. 11-5-3 as costs, and A should pay Rs. 30 with Rs. 3-12-4 as costs. A afterwards took a transfer of the decree to him by an assignment in writing and applied to execute it against J to the extent of the Rs. 90 and the Rs. 11-5-3. The application was rejected on the ground that it came within cl. (b) of S. 232 of the Civil Procedure Code.

Held, that the decree for money so far as it related to the Rs. 90 and costs was not a decree against several persons but against one person and so far as that part of the decree was concerned, the transfer did not fall within cl. (b) of S. 232 of the Civil Procedure Code.

The purpose of cl. (b) of S. 232 of the Civil Procedure Code was not to deprive the transferee of a decree who might happen to be one of the judgment-debtors of all relief, but to impose upon him the duty of proceeding by what was considered a more appropriate procedure, that is, a suit for contribution.

Jenkins C. J. & Batchelor J.

Anant v Nagappa, 10 Bom. L. R. 89.

———**Ss. 244, 318**—*Judgment-debtor, objector.* When an application is made by the assignee of the decree-holder purchaser for an order under S. 318 of the Civil Procedure Code, the mere fact that the judgment-debtors put in an objection, does not make it an application under S. 244 of the Civil Procedure Code, so as to entitle the judgment debtor to appeal against the order passed by the Court of first instance or by the Court of first appeal. *Bhimlal Dass v. Ganesh*, 1 C. W. N. 658 referred to.

Brett & Mookerjee J.J.

Mahomed v. Habil, 6 C. L. J. 749.

———**S. 244**—*Decree for permanent injunction—Lands purchased from decree-holder by another person—Vendee bringing a fresh suit for injunction.* The plaintiff's predecessor-in-title obtained a permanent injunction restraining the defendants from obstructing the former in his right of way. After the decree, the plaintiff became the purchaser of the property with reference to which the right of way was enjoyed. He was again obstructed by the defendants in using the way, and filed a suit against them. The lower Courts held that the plaintiff's remedy lay in executing the decree and not in filing a fresh suit.

Held, there was no bar to the plaintiff's suit, inasmuch as the injunction did not run with the land.

Jenkins C. J. & Butcher J.

Jamsedji Manekji v. Haria Daya, 10 Bom. L. R. 90.

—S. 244—*Joint tort feasons—Sale of a paramba in execution—Injury done to property by the judgment-debtor and decree holder after the confirmation of sale—Suit by purchaser for damages—Maintainability of.* The plaintiff purchased a paramba in Court auction and the sale was confirmed but before he obtained possession, the decree holder and judgment debtor joined with some others carried away some of the materials of a building standing upon the land. The plaintiff sued them all together for damages. *Held* that the suit was not barred by S. 244, C. P. Code for it was not a question relating to the execution of the decree, and that the purchaser was entitled to implead in one suit all the joint wrong doers including the parties to the suit in execution of which the property was sold. *Miller J.*

Anthatadev v Muyarakunda, 3 M. L. T. 971.

—S. 244, 319—*No bar—Delivery of symbolical possession—Wrong delivery—Not nullity—No bar to separate suit—*Delivery of symbolical possession even though erroneously made *i. e.* even though made under circumstances which do not make sec. 319 applicable, operates to give the person so put in possession a fresh cause of action and to place the judgment debtor in the position of a trespasser; and consequently, a suit by the assignee of decree holder's purchaser for actual possession of the properties purchased is not barred by sec. 244, C. P. Code. Symbolical possession delivered in circumstances under which sec. 319 C. P. C. is not applicable, is not a nullity. *Miller & Munro J. J.*

Govind v. Akella Venkata, 17 M. L. J. 598.

—Ss. 252, 546, 582, 583—*Execution of decrees.—Proceedings against surety by process of execution.* When a surety has given security for restitution in the event of the decree being reversed on appeal, he can be proceeded against in execution. 109 P. R. (F. B.), 1906; s. c., 1 P. L. R., 1907 (F. B.), followed. *Reid C. J.*

Deoki Nandan v. Gehna Mal, P. L. R. 1907, No.

—S. 258.—*Scope of—If it applies to mortgage decrees—Quere.* Whether S. 258 of the Civil Procedure Code applies to proceedings in execution of a mortgage decree. *Stephen & Mookerjee J. J.*

Harish Chandra v. Jagabandhu, 12 C. W. N. 282.

—S. 258—*Right of suit—Judgment creditor receiving payment and not certifying under S. 258 of the Code of Civil Procedure liable in damages though he has not executed and received the decree amount—*The law casts on a decree-holder receiving payment out of Court

the duty of certifying such payment in satisfaction of the decree under section 258 of the Code of Civil Procedure. The judgment-debtor has a cause of action against the decree-holder, when the latter having received the decree amount not only does not certify, but actually takes out execution. It is not necessary that money should have been actually recovered in execution.

S. Aiyer J.

In the matter of Madai Kaliani Anni 30 Mad. 545.

———**S. 258**—*Scope of. Held also*, that the provision of section 258 of the Code of Civil Procedure applied not only to judgment-debtors. but to those claiming through them or in their right, and that an adjustment between the decree-holder and the judgment debtor not certified within 90 days was barred under article 173 (A) of schedule II of the Limitation Act, and cannot be set up as a bar to execution by one claiming through the judgment-debtor or in his right.

S. Aiyer & Wallis J. J.

Panduranga Mudaliar v. Vythilinga Reddi 30 Mad., 537.

———**Ss. 266, 617**—*Attachment—Sale—Country Liquor—Collector's permission—Abkari Act (Bom. Act V of 1878) S. 16—Reference to High Court—Action by a third person not a party to the suit.* Country liquor is not exempt from attachment and sale in execution of a money decree passed by a Civil Court. It is saleable property and is covered by the first part of Sec. 266 of the Civil Procedure Code.

The Collector's permission is necessary to the sale of country liquor (S. 16 of the Bombay Abkari Act), but it is not necessary to attachment so far as the attachment can be made without removal.

A reference to the High Court under S. 617 of the Civil Procedure Code. is not bad merely because it arises out of the action taken by a third person not a party to the suit.

Jenkins C. J. & Heaton J.

Purshotam Narayan v. Balwant Babaji, 10 Bom. L. R. 13.

———**S. 283**—*Suit under it—Stamp on the plaint—Court Fees Act (VII of 1870) Sch. II, Art. 17, Clause 1.* Where a suit is brought under S. 213 of the Civil Procedure Code, the proper Court Fees payable on the plaint is Rs. 10 under clause 1 article 17 of Schedule II of the Court Fees Act. *Dhondo v. Govind, 9 Bom. 20 approved.* P. C.

Bibi Phul v. Ghanshyam, 10 Bom. L. R. 1.

———**Ss. 380, 410**—*Pauper Plaintiff, if can be required to furnish security for Defendants—costs.* The provisions of S. 380 of the

Civil Procedure Code cannot apply to the case of a person to whom permission has been granted under S. 410 of the Code to sue as a pauper as the effect of an order requiring such a person to furnish security for the Defendant's costs would be to render nugatory the order under S. 410.

In making an order under S. 380 of the Civil Procedure Code against a Plaintiff who had been permitted to sue as a pauper, the Court acted in the exercise of its jurisdiction illegally and with material irregularity. *Nusserooddeen v. Ujjul*, 17 W. R. 68, relied on.

Brett & Holmwood J. J.

Mussamat Hafizan v. Abdul Karim, 12 C. W. N. 163.

———**Section 396**—*Partition suit—Preliminary decree—Execution of decree—Proceedings in suit—Limitation—Res judicata.*—The plaintiff obtained a decree for possession of three-sixteenths of a house by partition. An application was made for execution and it was ordered that the Nazir should effect the partition by metes and bounds. These he fixed and reported to the Court, but the application was dismissed in default of prosecution. To a subsequent application for execution it was objected that it was barred by limitation.

Held, that the objection had no force. That the proceedings to effect the partition must be regarded as proceedings in the suit not subject to the provisions of the Limitation Act; and that even if they be regarded as proceedings in execution the previous application having been treated as within time without objection on the part of the judgment-debtors who had notice and opportunity to object, they could not be heard to say that the previous application was barred by limitation.

Robertson & Chitty J. J.

Durgadas v. Faqir Chand, P. L. R. 1907 No. 86.

———**Ss. 407, 592**—*Pauper appeal—Applications under S. 592 to be decided under the rules in Chapter XXVI—No leave to appeal in forma pauperis when at date of suit there is subsisting an agreement falling under section 407 (d).*—Although the question of the presentation of an appeal in *forma pauperis* is not subject to the rules contained in Chapter XXVI of the Code of Civil Procedure, the question of the right to appeal under section 592 of the Code of Civil Procedure is subject to such rules. *Mailthi v. Somappa Banta*, (26 Mad, 369), distinguished. When, at the time of the institution of the suit, there was subsisting an agreement falling within the terms of section 407 (d), no leave to appeal under section 592 can be given to the plaintiff who, by such

agreement, had allowed other persons to obtain an interest in the subject-matter of the suit.

White C. J. & Miller J.

Hanifa Bai v. Haji Siddick Bui Meanji Sait 30 Mad., 547.

———**Ss. 437**—*Suit against mutwallis—Suit for rent—Parties minors Representation*—When a suit for rent was brought against two persons in the capacities of mutwallis, but one of them who was a minor was not properly served and no guardian was appointed on his behalf.

Held—That mutwallis are trustees and the presence of all of them in the suit was essential and it was properly dismissed for defect of parties.

Maclean C. J. & Geidt J.

Syed Abdul v. H. C. Eggar 12 C. W. N. 160.

———**Ss. 457**—*Guardian ad litem—Appointment of married women whose husband is alive*—In no case can a married woman whose husband is living be appointed as guardian *ad litem*, and if such an appointment is made *de facto* such apparent appointment is not a mere irregularity. *Shamlal v. Ghasita*, 23 All., 459, followed. *Kachayi Kuttiali Haji v. Udumpumthala Kunhi Putta*, 1. 29 Mad, 58, dissented from.

Knox C. J. & Dillon J.

Kundanlal v. Gajadharlal, 29 All 728.

———**Sec. 539**—*Public charitable trust—Breach—Suit—Jurisdiction—Court in which suit should be brought*—Under sec. 539 of the Civil Procedure Code, one of two conditions must exist in order to bring a suit within its purview. Either there must be any alleged breach of any express or constructive trust and created for public, charitable or religious purposes, or there must be some direction of the Court deemed necessary for the administration of any such trust. If in any suit one of these two conditions exist it must be filed in the Court (mentioned in the section) either by the Advocate General or by two or more persons inserted in the trust, with the sanction of the Advocate General previously obtained.

It is not necessary to such a suit that a relief should be claimed of the description of the clauses (a), (b), (c), (d), and (e) in that section. These reliefs are not exhaustive and any other relief may be claimed in such a suit.

Chandavarker & Heaton J. J.

Amritram v. Ramji 10 Bom. L. B. 87

———**S 559**—*Security for costs—Delay—Appellant appealing in forma pauperies*—Though the Court has jurisdiction to demand security for costs from an appellant *in forma pauperies*, yet an order will not

be made except under very special circumstances.

Applications for security for costs should be made with due promptitude and should not be put in after the bulk of the costs has been incurred by both sides.

Wallis & Miller J. J.

Shrinivasa v. T, P. Subramania 17 M. L. J. 283

———S. 562—Court Fee—Suit for partition—Remand—Appeal.

A District Judge in appeal in a suit for a partition of a house remanded the suit, after deciding to what fractional share the parties were entitled, in order that the partition might be carried out by the Court of first instance. The District Judge, however, erroneously described his order as an order of remand under S. 562 of the Code of Civil Procedure.

Held on appeal from such order that the memorandum of appeal must be stamped as an appeal from a decree. *Kedar Nath v. Lalji Sahai* Weekly Notes, 1889, p. 198, followed. *Aikman & K. Husain J. J.*

Umrao Ali Khan v. Subhan Khan, A. W. N., 1908, 40.

———S. 623.—Review—Error of law—Effect of later ruling of Chief Court Where a decision was passed on an appeal in accordance with a published judgment of the Chief Court, which was overruled before the date of the passing of the judgment, but the Appellate Court was not aware of it owing to the fact that the later judgment was not published till then—*Held*, that the decision may be reviewed under S. 623 of the Civil Procedure Code.

Reid C. J.

Sujan Singh, v. Fateh Muhammad, P. L. R., 1907, No. 97.

———S. 624.—Review by successor of judge—Judgment—Order—Decree—Order dismissing appeal in default. S 624 of the Civil Procedure Code deals with all applications for review of judgment, whether a decree or an order is complained of. In the absence of grounds mentioned in the section a review of an order dismissing an appeal for default cannot be heard by the successor of the judge who dismissed the appeal. 23 Cal. 115, dissented from.

Reid J.

Bahadoo v. Fateh Khan, P. L. R., 1907, No. 107.

———Secs. 629, 623, 584, 591—Appeals from final decree objections to be taken, limit to—Review granted for "any other sufficient reason"—No appeal—Secs. 584 and 591, C. P. C. do not control s. 629 C. P. C. so as to confer a right of appeal in a case where the appeal is not based on one of the objections mentioned in s. 629; and consequently, in an appeal against the final decree, no objection against the order granting the review can be taken except on one of the grounds mentioned in sec. 629 C. P. Code.

When an application for review of judgment is granted "for any other sufficient reason" within the meaning of sec. 623 C. P. Code, the sufficiency of the reason is not good ground of appeal.

Arnold White C. J. & Benson J.

Gopal Aiyar v. Ramaswami 17 M. L. J. 603.

Companies Act, (Act VI of 1932) s. 136—*Execution of decree against company in liquidation not to be presented without making due provision for the right of judgment-creditor*—Judgment-creditor attaching decree against company must be allowed to prove in the name of the decree-holder in liquidation—It will not be equitable for Courts to prevent judgment creditors under sec. 136 of the Companies Act, from executing a decree against a company in liquidation without seeing that judgment-creditor's rights are respected in liquidation. Where A in execution of a decree against B attaches under section 273 of the Code of Civil Procedure, a decree which B holds against a company in liquidation, the Court will direct the liquidator to recognise A as the representative of B and allow him to prove for the decree debt in the name of B, and to receive and apply dividends payable to B in satisfaction of A's judgment debt subject to the rights of other attaching creditors to rateable distribution.

Benson & Wallis J. J.

Sesha Ayyar v. The Tinnevely Sugar Mill Company (limited) 30 Mad., 533.

Constructive possession—Doctrine of—Scope of. The doctrine of constructive possession applies only in favour of the rightful owner and must not, as a rule, be extended to the wrong-doer whose possession must be confined to land of which he is actually in possession.

Mookerjee & Caspersz J. J.

Mirza Shamsheer v. Nunshi Kunj, 12 C. W. N. 273.

Contract Act S. 23—*Promise to pay money to procure resignation of public office not enforceable.*—An undertaking to pay money to a public servant, to induce him to retire and thus make way for the appointment of the promisor, is virtually a trafficking with reference to an office and is void under section 23 of the Contract Act.

S. Aiyer J.

Saminatha Aiyar v. Muthusami Pillai 30 Mad. 530.

—————**S. 69—Voluntary payment—Civil Procedure Code, S. 310A**
Property of third person sold in execution—His remedy—Right to recover money erroneously deposited under S. 310 A. When a property belonging to A was sold in execution of a decree against B and A had the sale set aside by making a deposit under S. 310 A of the Civil Procedure Code.

Held, that A has no right to sue the decree holder for recovery of the amount of the deposit money paid to him.

A was not bound to apply under S. 310 A, (Civil Procedure Code, to set aside the sale nor had he the right to do so. *Woodroffe & Cox J. J.*

Kunja v. Bhupendra, 12 C. W. N. 151.

Contract Act Ss. 198, 211, 216—*Principal and agent-Notification Suit for adjustment of accounts*—The defendants as agents for the plaintiff entered into certain contracts for the sale of grain for future delivery. The defendant discharged these contracts by means of goods of their own and when subsequently the plaintiff sent on grain to the defendants to meet these contracts the defendants sold the plaintiff's grain at a profit. The defendants did not inform the plaintiff either that they had fulfilled the contracts with their own grain or that they had resold the plaintiff's grain at a profit.

Held that the plaintiff was entitled to whatever profit was realized by the defendants on this latter transaction.

Held also that where on a direction by the principal to his agents to purchase grain for him, the agent sold to him their own grain at a price higher than the prevailing market rate, the principal was entitled to repudiate the transaction and could not be alleged to have ratified it in the absence of knowledge that the agents were selling their own property and were charging him in excess of the market rate.

Richards & Griffin J. J.

Damodaradas v. Sheoramadas 29 All 730.

Contribution—*Co-heir not liable to contribute towards expenses incurred by other heirs in litigation in respect of common property*.—A co heir is not liable, either under an implied contract or on grounds of equity to contribute towards the expenses of litigation *bona fide* carried on by other heirs in respect of the common property.

S. Aiyar & Miller J. J.

Halima Bee v. Roshan Bee 30 Mad., 526.

Cosharers—*Joint property*—*Co sharer building on joint land without the permission of the other co sharers*—*Injunction*.—One of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other joint owners, notwithstanding that the erection of such building may cause no direct loss to the other joint owners. *Shadi v. Anup Singh* (12 All., 436) and *Najju Khan v. Imtiaz-ud-din* (18 All., 115) followed.

Stanley C. J. & Berkitt J.

Lachhani v. Gangadin, A. W. N., 1908, 19.

Court Fees Act, S. 7, clause 1—Mortgage—Sale—prior mortgages no relief—redemption fee payable on the plaint. Plaintiffs brought a suit for sale upon a mortgage. It was discovered that there were two prior mortgages on the property in respect to which no relief was claimed and no Court-fee paid. The Court below, however, decreed the suit and held the plaintiff entitled to redeem the prior mortgages without directing the sale to satisfy those debts, *Held*, that the Court-fee paid on the plaint was sufficient having regard to the relief claimed.

Stanley C. J. & Burkitt J.

Indar Sen Singh v. Rikhi Singh, 5 A. L. J. 18.

———**Sections 9, 10, 11 and 28—Court fee—Plaint—Court fee on plaint discovered during progress of suit to be insufficient—Held that** when it has been discovered that through mistake or inadvertence a plaint has been filed on an insufficient court fee stamp, the Court upon discovering the mistake can at any time and without any regard to limitation have the proper court fee made up, and when it is so made up, the plaint is as valid as if it had been properly stamped when presented. The principle of the decision in *Bal karan Rai v. Gobind Nath Tewari*, 12 All., 139, so far as applicable to plaints, rejected. (F. B.)

Hari Ram v. Akba- Hussain, 29 All., 749

Court of Wards Act, (9 of 1879, Bengal) ss. 14, 18, 19—Commutation of rent in kind (bhowls) in to rent in money (nakdi) Court of Wards, power of, to make such commutation—Benefit of—Estate—Bengal Tenancy Act (VIII of 1884), sec. 40—Commutation, permanent of temporary—how ascertained—Onus—Substitution made by Court of Wards, if binding and upon whom—The powers of the Court of Wards are co-extensive with the powers of the proprietor of the estate in charge of the Court subject to the qualification that the exercise of such powers is requisite for the proper care and management of the property of which the Court has taken charge.

Muhammad Mamtaaz v. Farkat Ali I. L. R. 23 All., 394 distinguished.

Commutation of rent in kind into rent in money is in substance nothing beyond a variation of a condition of the lease under which the tenant holds and of the mode in which the rent is to be paid, and such an act by the Court of Wards, may be done for the benefit of the property and the advantage of the ward, and is not *ultra vires*. It is binding both upon the disqualified proprietor, as well as upon successor, as though he had been that of his predecessor in title. Unless the successor can show that the power of the Court to bind him was restricted in some particular way.

Stephen & Mookerjee J. J.

Kashi v. Maharaja 6 C. L. J. 137

Custom—Muhammadan Law—Succession—Daughters—Right of representation—Heirs of predeceased son—Kashmiris of Banga, Jullundur District.—Held, that according to custom prevalent among Kashmiris of Banga, who are non-agriculturists, the heirs of a son who had predeceased his father were not excluded from inheritance.—54 P. R., 1906, S. C. 74 P. L. R., 1907, 114 P. R., 1893, 80 P. R., 1882. referred to.

Lalchand J.

Siraj-ud-din v. Muhammad Farukh, P. L. R., 1907, No. 121.

—————**Succession—Widow Collateral succession by—Alienation by widow—Right of widow of collateral to object—Ghirths of Kangra Declaratory suit.**—Held, that a widow among Ghirths [of the Kangra District] is entitled under custom to succeed collaterally to any property to which her husband if alive would have succeeded.

(ii) That a widow entitled to succeed collaterally is competent to bring a suit for a declaration that an alienation made by the widow of a collateral of her late husband was invalid.

Clarke & Lalchand J. J.

Lihori v. Radha, P. L. R., 1907, No. 108.

—————**Hindu Law—Alienation by sonless proprietor—Onus—Bedi Khatri of Kalwal village, of Dasuda—Tahsil of Hoshiarpur District.** Held, that it was not shewn that Bedi Khatri of Kalwal village of Dasuda Tahsil of Hoshiarpur District, were bound by agricultural custom, and that, therefore, a reversioner of a sonless proprietor was not competent to contest the validity of an alienation made by the proprietor.

Johnstone & Rattigan J. J.

Hikal v. Bhagwan P. L. R. 1908, No. 25.

—————**Alienation by childless male proprietor—Acquiescence by father of plaintiff.** A childless male proprietor sold his ancestral property by two sales in 1897 and 1900. The plaintiff, his nephew, sued to set aside the sale in 1903. It appeared that the plaintiff's father took no steps to challenge the validity of the sale and he did not die till about a year after the second sale.

Held, that the suit must be dismissed, for the plaintiff must be held bound by the acquiescence of his father. *Chatterji & Rattigan J. J.*

Muhammadi Begam v. Faiz Muhammad Khan, 9 P.L.R. 1908, No. 85.

—————**Muhammadan Law—Alienation—Sale by sonless proprietor—Gilani Sayads of Masania village, Batala Tahsil of Gurdaspur District—Necessity—Aqiqah ceremony of deceased son.** Held, that Gilani

Sayods of Masania village of Batala Tahsil of Gurdaspur District, were governed by Custom restraining alienation of ancestral land by a proprietor in the absence of Valid necessity.

Held, further that money borrowed by a proprietor for performing aqika ceremony of his deceased son must be held to have been done for a valid necessity.

Robertson & Lalchand J. J.

Shah Nawaz & Azmat Ali, 9 P. L. R. 1908, No. 8.

—————**Succession**—*Right of adopted son in his natural father's estate*—*Jats of Panipat, Kannal District*—*Held*, that among *Jats* of *Panipat Tahsil*, an adopted son is not entitled to take a share in the estate of his natural father in the presence of a brother.

Robertson & Chitty J. J.

Mukh Ram v. Not Ram P. L. R., 1907 No. 101

—————**Religious institution**—*Bindi Uda'si Faqirs of Ludhiana District*—*Held*, that according to custom prevailing among *Bindi Uda'si Faqirs* of *Ludhiana District*, the son of a deceased *mahant* of a religious institution, duly elected by the brotherhood as the successor to the deceased, was competent to inherit the property of the institution as against other *chelas* of the deceased *manant*.

Reid C. J. Chatterji & Kensington J. J.

Dasaundhi Ram v. Khazan Das, P. L. R. 1907 No. 102

—————**Succession**—*Widow*—*Step-son*—*Arains of Ludhiana District*—*Held*, that according to custom prevailing among *Arains* of *Ludhiana District*, a widow is not entitled to succeed to the property of her deceased husband when the latter has left surviving him sons by another wife.

Rattigan & Lalchand J. J.

Plashi Bakhsh v. Khewni, P. L. R., 1907 No. 93

—————**Alienation by mutation of names**—**Constructive**—*of mutation proceeds*—*Rebutting circumstances of an entry in the settlement*—*Records that a person is tenant*—*Recognition of existing right*—*Claim by rever-sioners*. K was entered as sole owner and founder of a village in the Settlement Record of 1872-73. and his nephew was described therein as a tenant at will of a certain area of that village. It also contained an entry to the effect that since 5 years, M had separated his cultivation from K.

In *Jamabndhi* of 1881-89, M was shown in possession of 250 Kanals as his *Khud Kasht* and in joint possession with his cousins. This area was nearly equal to one-sixth of the village. In 1889, H. M and C

three sons of K admitted in a mutation proceeding that M had one-sixth share of the estate. H had then two adult sons, but none of them objected. In 1905 two sons of H, one of whom had just attained majority and the other was born 6 years after 1889, treated the mutation proceeding as an alienation of one-sixth share and sued to get it declared invalid.

Held, upon the above facts, that M was in reality an owner of one-sixth share long before 1889 and the admission of that year was a mere recognition of an already existing right and gave no cause of action to the reversioners.

Held also, that whether a mutation proceeding embodies merely a recognition of existing right or is intended by the parties to take effect as an alienation by gift is to be deduced from circumstances of each case.

Rattigan & Lalchand J. J.

Nur Muhammad v. Sarada, 2 P. W. R. 371.

———*Right of reversioner of an occupancy tenant to restrain alienation of occupancy holding—Initial onus on reversioner—Shifting of such onus—Relevancy of proof of custom to restrain alienation of proprietary rights.* *Held*, that when a collateral of an occupancy tenant sues to obtain a declaration that a certain alienation of the occupancy holding by the said tenant shall not affect his reversionary rights, the initial onus lies on the said collateral but when he has proved :—

First, that he is entitled to succeed to the occupancy holding on the death of the occupancy tenant, and

Second, that had the subject matter in question been a proprietary right instead of a right of occupancy, he could have maintained the suit; the onus is shifted and it will be upon the person, who asserts that no such custom obtains as to occupancy rights to prove that contention.

F. B.

Abdullah v. Alladad, 2 P. W. R. 351.

Dekkhan Agriculturists Relief Act—Ss. 12, 13 and 71—Application of the sections to a suit instituted before the Act came into force in a particular District—Retrospective effect—Taking an account between parties—Sections 13 and 71 A of the Dekkhan Agriculturists' Relief Act have no retrospective effect. Section 12 of the Act is retrospective only so far as it regulates procedure. That part of the section which relates to taking an account between the parties is not retrospective.

(F. B.)

Fatmabibi v. Ganesh 31 Bom 630.

Estoppel—*Plaintiff cannot question jurisdiction of court in which he filed suit*—Held, that a plaintiff is estopped from pleading that the Revenue Court in which he filed his suit was not competent to hear the suit; it being one for Civil Courts, when the claim was decided by the Revenue Court on merits and the plaintiff had prosecuted his suit to the Court of final appeal insisting throughout that the suit was cognizable by Revenue Courts.

Robertson & Chitty J. J.

Jamiat Mal v. Khair Muhammad, P. L. R., 1904, No. 306.

Evidence Act, Ss. 32, Cls. (1) and (3), 32 (5), 157—*Admission by plaintiff when admissible in his favour*—Statement in previous position—When the plaintiffs sought to establish their pedigree by proving *inter alia* that A and B were brothers.

Held, that a statement to that effect made by one of the plaintiffs in a deposition given long before the controversy in suit arose was admissible in evidence.

Maclean C. J. & Holmwood J.

Jadu Nath v. Mahendra 12 C. W. N. 266

Evidence—Relevancy of revenue survey maps—*Probative value of—Revenue Survey Maps are evidence of title and possession. They are not conclusive and may be shown to be wrong, but in the absence of evidence to the contrary they may be properly and judicially received in evidence as correct when made.*

Mookerjee & Casperes J. J.

Mirza Shamseer v. Munshi Kunj 12 C. W. N. 273

———**S. 44**—*Want of jurisdiction should be patent*—Where a party seeks to avoid a judgment under sec. 44 of the Evidence Act upon the ground that it was delivered by a court not competent to deliver it he must show that such incompetency is patent upon the face of the judgment or proceedings of such courts. He cannot be permitted to reopen any findings of fact or any reasonable view of the law upon which the Court delivers the judgment that founded its jurisdiction.

Wasudev v. Game 3 Nag. L. R. 186

———**Ss. 115 and 116**—*Estoppel—Landlord and tenant—Tenant estopped from denying title of landlord.*—Section 116 of the Evidence Act estops tenant from denying the title of his landlord in a suit for rent by the former landlord in whose favor the tenant has executed a lease.

Rattigan J.

Bogar v. Karam Singh, P. L. R., 1907 No. 96.

Execution of decree—Attachment—Objection to attachment successful, but costs not allowed—Costs of objection not recoverable in separate

suit—Attachment of certain property in execution of a decree being made, objections were put in by persons who claimed the attached property as their own. These objections were successful but, for some reasons not explained, the objectors were not allowed costs. The objectors instituted a suit against a decree-holder to recover damages for unlawful attachment and the costs incurred in making objections. *Held* that the costs claimed could not be recovered by means of a separate suit. *Madh Ram Das v. Ajudhia* 8 All. 452 and *Kadir Bux v. Salig Ram* 9 All. 474 followed.

Aikman J.

Salig Ram v. Tikaram A. W. N. 1908, 18

Execution, mortgage decree—Decree directing sale of *nij jote* lands mortgaged—Mortgage—judgment debtor, if competent to raise the question of the saleability of *jotes*, in execution—Saleability or otherwise of *nij jote* lands, onus of proof of—(Regulation III of 1812), sec. 11—*Southal Pergunna*—Regulations—Settlement Court, divisions of—Suit, maintainability of—Where a mortgage decree distinctly provides for the sale of certain *nij-jote* lands mortgaged and directs that the mortgaged debt must be realized, in the first instance, by the sale of the mortgaged property, it is not open to the mortgagor-judgment debtor to object to the execution of the decree on the ground that *jotes* are not saleable.

The onus is not on the decree holder, in a case, even if it were open to the judgment-debtor to raise the question of saleability of the *jotes* to show that *jotes* are saleable, but on the judgment-debtor to prove that the *jotes* are not saleable.

In the absence of a decision of any settlement court or of a decision by any Civil Court on the question of the transferability of those *jotes*, a suit for the sale of *jotes* mortgaged does lie in the Civil Court.

Rampini & Mookerjee J. J.

Kartika v. Nilambor 7 C. L. J. 101

Forest-right, lease of—Grant to cut timber of a certain size, of limited rights, construction of—A grant of the right to fell timber of a particular class and specified size during a defined period of time, though extremely restricted in its scope which prohibited the lessee from doing any damage to the *banker of mahal* i. e. to the forest, and imposed upon the lessee a condition to notify to the Court any occurrence which might happen and though obviously a grant of the most valuable of the forest rights, it can be regarded as a sale of timber. *Gopal v. Sunkuree* 23 W. R. 456 distinguished.

A grant of fishery right or right of a pasture or the like may be

made in dependently of an interest in land. *Stephen & Mookerjee J. J.*

Abdullah v. Asraf Ali 7 C. L. J. 152

Guardians and Wards Act, section 7 (1) —Minority Act, sec. 3
—Minority—Guardian and ward—Grant of probate or letters of administration to the guardian of a minor does not extend period of minority
—The grant of probate or letters of administrators to the estate of a deceased person to the *de facto* guardian of minor does not *ipso facto* operate as declaration of guardianship or appointment of guardian of the minor within the meaning of section 3 of the Majority Act.

Johnstone & Lalchand J. J.

Ganeshi Lal v. Suraj Mal 8 L. R. 1907 No. 105.

Sections 7, 41 and 49—Guardian and Ward—Review of order dismissing application for appointment of guardian—C. P. Code s. 623—Held, that the District Court is precluded by Section 48 of the Guardian and Wards Act for reviewing its order dismissing an application for appointment of guardian of a minor passed under Section 7 of the Act, The Civil Procedure Code does not apply to cases under the Guardians and Wards Act.

Rattigan & Lalchand J. J.

Farid v. Mitho, P. L. R., 1907 No. 105

Secs. 47, 48—Indian Majority Act—Power of Chamber Judge to alter, vary, modify or set aside orders made by his predecessor in Chamber under the Guardian and Wards Act—Period of minority on vacating of such orders does not extend to 21 years—Section 48 of the Guardian and Wards Act immediately following as it does the section which provides for appeals is intended to give finality to contested orders and to enact that, where once an order is made, except as provided in section 47 and saving the provisions of section 622 of the Civil Procedure Code, the order shall be final and shall not be contested by a substantive suit or by any other form of litigation.

The Guardian and Wards Act makes no provision for setting aside an order made under the Act, but judging from the analogy of English practice there can be no doubt that in these miscellaneous matters the Judge sitting in Chambers and making orders on petitions and the applications has the power to vary, alter, modify or set aside his own orders when he finds that the order is one which ought not to have been made and that the order is one that requires in the interests of justice to be dealt with in that way.

Davar J.

Nagar Das v. Anandrao 31 Bom, 540

Guardian and Minor—*Bond by guardian—Liability of minor—Necessaries—Bond to keep alive a debt due for necessaries, when binds minor's estate—Limitation—Personal liability*—The proposition that a guardian of a minor can not bind his ward personally by a simple contract debt, by a covenant or by any promise to pay money or damages, is subject to the modification that the promise will not bind the minor unless it has been made merely to keep alive a debt for which the ward's property was liable.

It is established law that a guardian can not bind his ward's estate except by a document purporting to bind it.

When a third person enters into dealings with the guardian of a minor and advances money for necessaries for the minor or for the benefit of his estate and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn as to render the estate of the minor in law liable for the debt. *Brett & Holmwood J. J.*

Bhawl Sahu v. Baij Nath 12 C. W. N. 256.

High Court Rules, rule 544—*Taxation—Bill of costs—practice*—Rule 54 of the Bombay High Court does not empower a Judge to make an order on an attorney's application for taxation of his bill of costs for business not transacted in court unless such order be by consent, and the court has not any inherent power on which the jurisdiction can be rested.

Jenkins C. J. & Batchelor J.

Framji Cawasji Markar 10 Bom. L. R. 76.

Hindu law—*Alienation by a widow—Right of reversioners to challenge—Whether crown can challenge*—The reversioners of the deceased husband of a Hindu Widow are entitled to contest the validity of an alienation, without legal necessity, by her of the immoveable property, of every description, left by her late husband and it is altogether immaterial whether it is his ancestral or, in any way, self acquired,

Per Lalchand J. Her right to alienate such property is positively restricted even so far that the crown itself, as an ultimate heir might challenge the alienation if effected without necessity.

Ratigan & Lalchand J. J.

Kirpa Ram v. Mussammatt, 2 P. W. R. 452

———*Maintenance—Wife's right of residence in ancestral family house against the creditor's right to sell it to recover family debts—Held, that a Hindu widow or wife is not entitled to claim residence in the family dwelling house against the creditor's right to proceed against it in*

execution of a decree obtained by him to recover just family debts.

Johnstone & Mahommed Shah Din J. J.

Nihal Devi v. Shib Dial 9 P. L. R. 1908 No. 31

——— *Widow—Effect of compromise entered into by a Hindu female with a limited estate—Held* that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court; the reversioners can only be bound by decree made after a full contest in a *bona fide* litigation. *Gobind Krishna Narain v. Khunni Lal* (Weekly Notes, 1907, p. 151) followed.

Stanley C. J. & Burkitt J. J.

Mahadevi v. Baldeo A. W. N. 1908, 16 = 5 A. L. J. 43

——— *Religious endowment—Manager of mutt—Liability for debt incurred by predecessor—The* estate belonging to a mutt is liable in the hands of its manager for debts incurred by his predecessor in office for purposes necessary for the maintenance of the institution even though the debts were not made an express charge on the estate by the predecessor just as much as the estate of an infant is liable for a contract by his guardian even without any express charge over the estate. The proper decree to be passed is the one limiting the liability of the estate to the income of the muth property. *Sundarrapa* 17 Mad. 306 approved. *Ravalasinghji* 20 Bom. 61 explained.

White C. J. & Miller J.

Devvikamari v. Nur Mahomid 3 M. L. T. 97

——— *Widow's estate—Widow—Gift in favour of—Malik—Meaning of—Where* the words "*Malik in a Khud iktiaar*" are used in a deed of gift in favour of a Hindu widow they import an idea of full proprietary rights and unless there is some thing in the context to qualify her rights she takes an absolute interest in the property. *Kallany Kaer* 24 W. R. 305 *Lalit Mohan* L. R. J. 305 approved.

P. C.

Suraj Mani v. Rabi Nath 10 Bom. L. R. 525 = 5 A. L. J. 67 = 12 C. W. N. 236 = 7 C. L. J. 131

Husband and wife.—Implied authority of wife to pledge husband's credit when rebutted. The presumption of implied authority on the part of the wife to pledge her husband's credit for necessaries may be rebutted by proof of circumstances inconsistent with the existence of such authority; such authority can not be presumed where the husband expressly forbade his wife to pledge his credit.

Wallis J.

Mahomed Sultan Sakib v. Horace Robinson, 30 Mad. 543.

Immoveable property—Whether standing timber is. Although standing timber is moveable property within the meaning of S. 3 of the Indian Registration Act, yet under S. 3, clause 25 and S. 4 of the General Clauses Act of 1897, standing timber is immoveable property with the meaning of the Civil Procedure Code.

Growing trees may be regard as part of the soil and consequently immoveable property.

But where under a contract the grantee has no right to the soil takes no interest in the land and obtains a right to the trees with a view to fell them immediately or within a reasonable time, without any stipulation for the beneficial use of the soil but with a license to enter and take the trees away, the transfer may be regarded as one of moveables.

Stephen & Mookerjee J. J.

Abdulullah v. Asraf, 7 C. L. J. 152.

Income Tax Act, 1886, S. 14—Compulsory payment of income tax by one party in respect of outstanding due to another—Suit to recover the same from other party. The income tax authorities assessed the plaintiffs the widows of one K who died in 1904 for the tax for the year 1905-6, in respect of certain outstandings which formed part of the estate of the deceased at the time of his death. The plaintiffs alleged that the outstanding had not come to them but had been bequeathed under the will of the deceased to the present defendants. Nevertheless the income tax authorities persisted in their demand and levied the tax from the plaintiffs. In a suit brought by the plaintiffs against the defendants to recover the amount paid by them for the latter, *held*, that the plaintiffs were not entitled to recover, the defendants were not legally liable to pay the tax for the Collector had not assessed them at any amount. Ss. 69 and 70 of the Contract Act do not apply.

Wallis & Miller J. J.

Raghavan v. Alamelu, 3 M. L. T. 114.

Insolvent Act (Indian St. 11 and 12 Vic. C. 40) S. 5—Insolvent Debtor's Court at Bombay—Jurisdiction—"Reside"—A person residing at Shanghai cannot apply for insolvency to the Bombay Court. A person residing in Shanghai and carrying on business in partnership in Bombay can not present his petition to the Insolvent Debtor's Court at Bombay to have the benefit of the Act.

Russell J.

Re Manekji Pestonji Talati, 10 Bom. L. R. 34.

———(11 & 12 Vic. C. 21) Ss. 27, 26—Jurisdiction of the Insol-

vent Court outside the Bombay Presidency—Person in possession of insolvent's property can be directed to hand it over to the Official Assignee. The Court for the relief of Insolvent debtors sitting in Bombay has jurisdiction to make an order under S. 26 of the Indian Insolvent Act against a person residing outside the Bombay Presidency.

Jenkins C. J. & Batchelor J.

R. D. Sethna v. R. S. D. Chopra, 10 Bom. L. R. 77.

Jurisdiction—Civil Court suit to set aside—Government order imposing full assessment. A suit for setting aside a Government order imposing full assessment on lands granted to the plaintiff's ancestors for charitable purposes of feeding Brahmins is cognizable by Civil Courts.

Benson & S. Nair J. J

Venciteswara v. Secretary of State, 3 M. L. T. 104.

—————*Civil Procedure Code, S. 20.*—A partnership was entered into at Lahore and the firm was carrying on the business at Hansi in the Panjab. Plaintiffs were partners of the firm residing at Khurja in the U. P. They brought a suit for their shares of the profits in the Court at Aligarh on the basis of an alleged special contract by virtue of which their share of the profits had been agreed to be remitted to Khurja. The alleged contract was not proved. *Held*, that the Court below ought not to have entertained the suit and should have returned the plaint for presentation to the proper Court.

Stanley C. J.

Banka Mal v. Sham Lal, 5 A. L. J. 88. = 1908 A. W. N. P. 46

—————*Want of—found in appeal—Procedure—Return of plaint.* If a Court of appeal decides that the original Court had no jurisdiction to entertain the suit, the right course to adopt is to return the plaint for presentation to the proper Court.

Consent of parties cannot confer jurisdiction upon a Court, where it has not inherent jurisdiction over the subject matter of the litigation, and the judgment of a Court which lacks this essential jurisdiction is totally void and this would not be cured by waiver or acquiescence.

Where, however, the defect is not apparent on the face of the proceedings, where specially the question of jurisdiction depends upon a fact, the existence of which is alleged by one of the parties in the Court of first instance and not controverted by the other, it is not obligatory upon a superior Court to enter into the question, specially where, in order to adjudicate upon the question satisfactorily, a further investigation of the facts would be essential.

If the want of jurisdiction appeared on the face of the pleadings or the admission of the parties or upon the evidence, the question could not only be raised in appeal for the first time, but it would be the duty of the Court to entertain it. *Ahta v. Durga* 25 Cal. 146, referred to

When a objection as to jurisdiction is taken for the first time before the Appellate Court, and it becomes at least one upon which there is a reasonable ground for uncertainty, the Court should proceed under sub-sec 2 of S. 16 A of the Civil Procedure Code and refuse to allow the objection to be taken at the appellate stage. *Shiba v. Gupi* 24 Cal. 449 referred to.

Stephen & Mookerji J. J.

Abdulullah v. Asraf Ali, 7 C. L. J. 152.

———*Claim for pre-emption of revenue paying land competency of Court to entertain it with regard to its value at thirty times the Jama—Its incompetency to decree possession on payment of a sum exceeding its pecuniary jurisdiction—Return of plaint.* Held, by the Full Bench, that although a suit for possession of revenue paying land on the ground of pre-emption can be entertained by a Court having jurisdiction with regard to the value of the land calculated at thirty times the jama, but it has no power to decree the claim on payment of a sum in excess of the limits of its pecuniary jurisdiction. Civil Appeal No. 941 of 1905 published as No. 16 (Civil) of the P. W. R. of 1907, followed. (F. B.)

Mohamad Abzul v. Nand Lal, 2 P. W. R. 456.

———*Valuation of declaratory suit to protect reversionary right in the alienation of revenue paying land for purposes of jurisdiction, course of appeal and revision Punjab Courts act (XVIII of) 1884 as amended by act (XXV of) 1899 sections 40 and 70 Rule 1 (b) of the Rules made under suits Valuation act (VII of) 1887—Ground of revision.* Held, by the Full Bench (of three Judges) that for the purpose of settling pecuniary jurisdiction of a Court and for determining course of appeal under sec. 40 and that of Revision under sec 70 of the Punjab Courts act (XVIII of) 1884 as amended by act (XXV of) 1899 the value of a suit for obtaining a declaratory decree to the effect that an alienation of revenue paying land would not affect the reversionary rights after the alienor's death is the value of the land calculated at thirty times the jama (revenue) and not the amount alleged to have been paid as consideration for the alienation.

P. R. (Civil) 145 of 1892 (*Bakha v. Jhandu* 35 of 1901 (*Khudayar v. Watal Din*) and Further appeal No. 684 of 1901, (*Murad v. Gulam Fatima*), unpublished, followed and approved.

Held, by the Division Bench that the appeal does not disclose any ground for revision. F. B.

Jallas v. Gehna 2 P W R. 466.

———of Courts—*Munsif's Court suit under sec. 77 Registration act. Will disposing of property of the value of more than Rs. 2,500—Court Fees act sect. II art 17 (6)*—Per Curiam: A District Munsif has no jurisdiction to try a suit under sec. 77 of the Registration Act to direct registration of a will, where the will in question disposes of property of more than Rs. 2,500 in value. The suit is not one to which sec. 7 cl 4 (c) of the Court Fees act is applicable, but is one to which art. 17 (6) of sect. II of the Court Fees act applies i. e. a suit in which it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by the Act.

Per Subrahmaniya Aiyar J: In the absence of specific statutory provisions, the jurisdiction of Courts with reference to the pecuniary value of the subject matter ought, having regard to the general considerations underlying the constitution of the mofussil courts in this country, to depend upon a basis ascertainable and determinable by the Court itself, whenever that is practicable and not upon the mere will of the plaintiff. F. B.

T. S. Ramu v. T. S. Sankara 17 M. L. J. 873.

———*Election of Councillor, validity of—Applicant's right to question election—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code sec 11—City of Bombay Municipal Act (Bombay Act III of 1888), sec. 33.*—Under section 33 the Chief Judge of the Small Cause Court has jurisdiction to determine the validity of a contested election. The High Court has no jurisdiction to entertain such a suit.

Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any.

The jurisdiction of the Courts can be excluded not only by express words but also by implication, and there certainly is enough in section 33 of the Municipal Act for this purpose.

Semble.—If the High Court has jurisdiction there might be a conflict between the view of the High Court and the order of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act

prevail.

Jenkins C. J. & Batty J.

Bhaishanker v. The Municipal Corporation of Bombay 31 Bom. 604.

Land Acquisition Act (1 of 1894), sec 9,—25 (2) Jurisdiction—compensation awarded.—Where no claim pursuant to a notice under sec 9 of the Land Acquisition Act was made by a party interested to make a claim.

Held—That the Land Acquisition Judge under sec. 25, sub-sec. (2) had no power to make an award for an amount exceeding that awarded by the Collector, unless the claimant satisfied him that he had sufficient reason for refraining from making his claim in due time.

The Judge should state his reasons for allowing such a persons to prefer his claim.

Rumpini C. J. & Sharfuddin J.

The Secretary of State for India in Council v. Govind Lal 12 C.W.N. 263.

—————**sec. 18 (1)—Award—Application for reference to the Civil Court—Collector's order refusing judicial order—High Court's power to revise.**—In rejecting an application made under sec. 18 cl 9 of the Land Acquisition act asking for a reference to the Civil Court, the Collector acts judicially, and his order is subjects to revision by the High Court.

Henderson & Mitra J. J.

The Administrator General of Bengal v. The Land Acquisition Collector
24—Pergs. 12 C. W. N. 241.

Land Acquisition proceedings—Transfer of property Act secs. 88, 90—Decree for sale—Compensation money—Application for execution against compensation money.—When the property covered by the mortgage was under the land Acquisition proceedings converted into money, the lien which was attached to the property was transferred to that which then represented the property, namely, the compensation standing to the credit of the mortgagor in the Collectorate, and the mortgagee is entitled to take out the execution of a decree for sale of the mortgaged property against the money standing to the credit of the mortgagor in the Collectorate It is not necessary for him to obtain a further decree under sec. 90 of the Transfer of Property Act. *Basu Mal v. Tujmmal* 16 All 78 dissented from.

Brett & Mookerjee J. J.

Jatani Chowdhurani v. Amar Krishna 6 C. L. J. 745.

Landlord and Tenant—South Canara, tenant in—No presumption that tenancy is chalgeni or mulgeni—Immemorial possession on uniform rent, presumptive evidence of mulgeni.—There is no presumption in South Canara that a tenancy is either *chalgeni* or *mulgeni*. Immemorial possession on a uniform rent will raise a presumption in favour of *mulgeni* tenure and

the burden will be on the other party to prove that the tenant was holding on chalgeni tenure.

Daines & S. Nair J. J.

Kittu Hegadthi v. Channamma Shettathi 30 Mad., 528.

(This is an old case of 1904.)

—————*C. P. Tenancy Act—What constitutes atenancy.*—An estate of agricultural tenancy in the Central Provinces does not originate by operation of law or spontaneously, It can only be created in the first instance by a contract between landlord and tenant. It is only after this has been established that the C. P. Tenancy Act fastens upon the contract and there after regulates subsequent enjoyment development and devolution of the tenant right in a landlord employer G. as his agent to carry on the duties of Mokudam in it his village and in remuneration for those services and for no other purpose allowed G to appropriate for his own use the usufruct of a specified *Sir* field which was a part of W's home farm, *Held* this arrangement did not constitute G, a tenant of such field.

Wasudeo v. Ganu 3 Nag. L. R. 186

Letters Patent—Clauses 10, 39—High Court—Disciplinary jurisdiction—Order suspending a pleader from practice—Leave to appeal—Privy Council.—No appeal lies by right of grant against an order of the High Court under cl. 10 of the Letters Patent as it is not in the nature of a final judgment, decree or order under cl. 39; and, therefore, the High Court has no power to grant leave to appeal. The aggrieved party must proceed by way of petition of His Majesty the king for leave to appeal.

Knight & Macleod J. J.

Ganesh v. Govt. Pleader 10 Bom. L. R. 21.

—————**Ss. 19, 20.—Acknowledgment—Part payment—Crediting of interest.** In order that an acknowledgment of a debt should be effectual to save limitation under S. 19 of the Limitation Act it must be signed by the person to be bound thereby.

Similarly a part payment of the principal of a debt must appear in the handwriting of the person making the part payment and not in that of any other person, however authorized.

Held also that the mere crediting of interest in a banker's books cannot be regarded, for the purpose of saving limitation, as equivalent to a payment of interest.

Knox C. J. & Dillon J.

Dharam Das v. Ganga Devi, 29 All 773.

Limitation Act, art. 11—Suit to set aside order dismissing an appli-

tion under S. 278, C. P. Code for default. An order dismissing an application under S. 278 of the C. P. Code for default is an order passed without investigation and art 11 of the Limitation Act does not apply to a suit to set aside such an order.

White C. J. & Miller J.

Saraba Subarao v. Thimayya, 3 M. L. T. 106.

———**Art. 12 (a)**—*Scope of.* Article 12 (a) of Schedule II of the Limitation Act is not confined only to suits which seek no relief other than a declaration that the sale ought to be set aside, but applies also to suits where other relief is sought which can only be granted on an annulment of the sale.

Rampini & Sharfuddin J. J.

Ram v. Rameswar, 6 C. L. J. 719.

———**Arts. 59 and 60**—*Suit to recover money deposited on current account—Loan—Deposit* Held, that a suit to recover money deposited with a banker on a current account is governed as to limitation by article 59, and not by article 60, of the second schedule to the Limitation Act. *Piray Lhl v. Elizabeth Beckeley*, F. A. No. 96 of 1882, decided on the 4th April 1885, followed.

Knox C. J. & Dillon J.

Dharamdas v. Ganga Debi, 29 All. 773.

———**art. 75**—*Bond—Instalments—Power to sue for whole amount on default of payment.* A bond payable by instalments contained a provision that in default of the payment of any one instalment it would be in the power of the creditor to sue for the whole amount due under the bond without waiting for the period provided for the payment of other instalments. Held that the provision did not mean that the creditor should be compelled to sue for the whole on default of payment of one instalment, nor did limitation in respect of the whole debt commence to run from the date of the first default. *Jadab Chandra Baksh v. Bhairab Chandra*, 31 Cal. 297, and *Hari Pershad v. Nasib Singh*, 21 Cal. 542 dissented from.

Knox & Aikman J. J.

Ajudhia v. Kunjal, A. W. N., 1908, 36.

———**art. 118**—*Limitation—Adoption—Suit for possession of immovable property in which defendant sets up adoption as defence in support of right to hold property.* When a suit for possession of immovable property is filed and the defendant sets up right to hold the property by reason of his being the adopted son of the deceased owner of the property.

Held, that article 118 of the second Schedule of the Limitation Act applies to the case and the period of limitation begins to run from the date

the alleged adoption became known to the plaintiff.

Sir William Clarke C. J.

Ishar v. Partap, 9 P. L. R. No. 38.

——arts 164, 169—*Scops of.* An application to the Appellate Court by a defendant, who was not duly served with summons in the lower Court and who, has not appealed to set aside the original decree under S. 108 of the Code of Civil Procedure is, for purposes of limitation, governed by article 164 and not article 169 of schedule II of the Limitation Act.

Benson & Wallis J. J.

Sankara Bhatta v. Subraya Bhatta, 30 Mad. 535.

——arts. 173A, 179—*Application in accordance with Law—* Where a court passes a decree for sale of property and the place where such property is situate, is transferred to the jurisdiction of another Court former court may still execute decree—Application made to such court to transfer decree to the latter will save limitation-bar—Representative of judgment-debtor is judgment debtor within the meaning of S. 258 and must certify adjustment within time fixed by art. 173A of sched. II of the Limitation Act. The Court at C passed a decree for the sale of certain immoveable property. Subsequently the territory where such property was situate was transferred to the jurisdiction of Court D. The decree-holder applied to the Court at C, to transfer his decree for execution to the Court at D. The decree was transferred, and in execution the purchaser of the equity of redemption from the judgment debtor who was made a party to the execution proceedings pleaded that the application for execution was barred by limitation, and he also set up an adjustment between the judgment-debtor and the decree-holder made more than 90 days previously which was not certified to the Court. The questions arose whether the application to the Court at C for transfer was an 'application in accordance with Law' within article 179 of schedule II to the Limitation Act, and whether the purchaser from the judgment-debtor could plead the uncertified adjustment.

Held, that the Court at C did not, within the meaning of section 649 of the Code of Civil Procedure, cease to exist or to have jurisdiction to execute the decree on the transfer of property from its jurisdiction, as such transfer did not take away the jurisdiction which he had to execute its own decree under section 223 of the Code of Civil Procedure, and the Court at D consequently acquired no jurisdiction to execute the decree under section 649, which could only arise, if the Court at C either ceased to exist or to have jurisdiction to execute the decree. The Court at C was, therefore, the Court to which the decree-holder was bound to apply under section 223 of

code of Civil Procedure, and his application saved the bar of limitation under article 179 of schedule II of the Limitation Act.

S. Aiyar & Wallis J. J.

Pandurang v. Vythinka 30 Mad. 937

—————**Art 179, (Cl. 4)—Step in aid of execution—Application for order absolute—Defective and unverified application—T. P. Act sec. 89**—An application for an order absolute though defective in particulars and unverified and consequently returned to the applicant as not being in accordance with the rules, may yet be a step in aid of execution when the defects are such as not to prejudice the judgment-debtor or to mislead the Court. *Malikarjunadas v. Lingamurti* I. L. R. 25 M. 344, explained.

Wallis & Milner J. J.

Ramayan v. Kadri 17 M. L. J. 598.

—————**Art 179—Execution of decree—Application in continuation of previous proceedings in execution.**—On the 7th December 1903, the sale of certain immovable property, which had been attached was ordered. On the 30th January 1904, the Amis reported that he had been unable to hold the sale, as there were no bidders. Notice of this fact was given to the decree-holder and he was allowed time till the 10th February to pay in fees for a fresh sale. On that date, no steps having been taken by the decree-holder, the case was ordered to be struck off "for the present." On the 13th January 1906, the decree-holder again applied, asking that the property, which was still under attachment, might be sold. *Held* that this was not a fresh application in execution, but merely an application to revive the former proceedings, and was not barred by limitation. *Aitman J.*

Mujib ulah v. Umed Bibi A. W. N. 1908 39.

—————**Art. 179—Step in aid of execution—Application to bring on record representative of deceased judgment debtor is a step in aid of execution—Civil Procedure Code, Ss. 232, 368—Application under section 368 not prohibited by S. 232**—Under the proviso to section 232 of the Code of Civil Procedure, the transferee of a decree cannot obtain execution without notice to the judgment-debtor, and where the judgment-debtor is dead no such notice can be sent until his representatives are brought on record. There is nothing in section 232 to prohibit the transferee from applying under section 368 to bring the representative on record and such an application must be regarded as a step in aid of execution within the meaning of article 179 of the Limitation Act.

Benson & Wallis J. J.

Mahalinga Meopanar v. Kuppanachuriam 30 Mad., 541.

Madras Rent Recovery Act 1908—Rent charge for second crop

on dry land—Irrigation not provided by Zemindar—Liability of tenant to pay—custom plea of.—Rent charge for second crop on dry land when irrigation is not provided for by the landlord is clearly an enhancement of the rent. If the propriety of the charge is founded on the basis of custom, it lies on the landlord to establish its propriety and prove the custom. (*Fischer* 21 Mad. 136 followed).

Human. Redi v Nagasuram 3 M. L. T. 101.

———Ss 4, 11—Resjudicata—Contract to pay tax on improvements legal—Previous decision in summary suit binding in subsequent suits—Poramboke, water in—Water in poramboke lands not Sircar water—Appeal, powers of Court in—Appellate Court may by consent order trial on issues not raised in appeal.—Water in poramboke lands belonging to mirasidars cannot be said to be Sircar water and taxed as such. The effect of an appeal is to reopen the decree of the lower Court and it is competent to the Appellate Court on the agreement of parties to remand the case for trial on issues not raised in the memorandum of appeal. The decision of a Revenue Court as to the propriety of a particular condition in a patta, when such decision does not proceed on any considerations peculiar to the particular fasli, is *res judicata* between the parties in subsequent suits in the same Courts. Section 11 of the Madras Rent Recovery Act contemplates rents being fixed by contract and it is only in the absence of contracts express or implied that resort is to be had to the methods of fixing rent specified in clauses 2 and 3 of the section. There is nothing in clause 4 to make contract illegal which would have the effect of giving the landlord a share in the benefit of the tenants improvements. A custom to this effect may be opposed to the proviso to clause 4, but a contract is expressly authorised by the section and is not opposed to anything in the proviso.

Benson & Wallis J. J.

Natesa Gramani v. Venkatarama Reddi 30 Mad., 510.

———Section 11 (1)—Betel cultivation—Special rate of rent by custom—Where a landlord claimed a special rate of rent from the tenants for betel cultivation and it was found on the evidence that such a rate was compulsory and that when many rents were fixed on the land in substitution of the old Waramor sharing system it was settled that a special rate should be payable for betel cultivation.

Held, that the custom was valid and enforceable and the landlord was entitled to recover.

Wallis & Miller J. J.

Suffu Pillai v. Nagasani 3 M. L. T. 163

Mahomedan Law—Validity of gift—Marzal maut—Right test to be applied—Practice when concurrent findings of facts are under considera-

tion—Where the question was a certain deed of gift made by a deceased Mahomedan donor in favour of his son was invalid by reason of the Mahomedan law of *marzal mout* relating to gifts made in death illness and the courts in India concurred in finding in favour of donee and applied the test which was treated as decisive on this point. "Was the deed of gift executed by the donor under apprehension of death,"; their Lordships held that the test which appeared to be the right question was essentially one of fact and upheld the concurrent finding of the lower courts in favour of the donee.

Where the question was essentially one of fact, and of the weight and credibility of evidence upon which a court of review can never be in quite as good a position to form an opinion as the Court of first instance, it would probably be enough to prevent their Lordships from interfering if it should appear that there was evidences such as might justify either view without any clear preponderance of probability.

P. C,

Fatima Bibi v. Shaikh Ahmed 10 Bom. L. R. 50=12 C. W. N. 244=7 C. L. J. 122

——— *Wahabis, right of, to worship at sunni mosques—Restrictions to its exercise—special dedication of mosque for use of a particular sect—Validity.—Quere.*—Whether according to the Mahomedan Ecclesiastical law, a mosque can be specially dedicated for the use exclusively of the Hanafi sect of sunni—Mahomedans Persons belonging to the amil-bil-hadi (or Wahabi) sect of Mahomedans are entitled to worship at mosques chiefly used by the Hanafi sect and use the long loved arin and raise the hands above the knee during worship *Ata-Ullah v. Azim-Ullah* 12 All. 494 and *Fazekarim v. Moula Baksh* 18 Cal 448 relied on.

In making a declaratory decree that the Plaintiffs were entitled to worship in accordance with the Wahabi rituals, the Court imposed the condition that in exercising this right the Plaintiff's should not interrupt or disturb the worship of others.

Brett & Chitty J. J.

Moulvie v. Kurban 12 C. W. N. 289.

——— *Gift—Gift by registered instrument no valid if unaccompanied by delivery of possession.*—The Muhammadan Law is applicable to gifts between Muhammadans, even when effected by registered instrument, and such a gift will be invalid unless the requirements of Muhammadan Law as to possession are complied with. *Chaudhri Mehdi Hasan v. Muhammad Hussain*, L. R., 33 I.A. 68 at p. 75, followed. *Mogulshah v. Mahamad Sahib*, 11 Bom. 517 referred to. *Alabi Koya v. Mussa Koya*, 24 Mad., 513, not followed.

Wallis & Miller J. J.

Vahazullah Sahib v. Boyapati Nagayya 30 Mad., 519.

Majority Act, (IX of 1875), sec. 3—Period of minority on vacation of an order does not extend to 21 years—Guardians and Wards Act sec. 47, 48—If an order is made under the Guardians and Wards Act and such order is subsequently set aside the period of minority is not extended to 21 years under section 3 of the Indian Majority Act. Davar J.

Nagardas v Anandrao 31 Bom. 520

Market—Right of zamindar to establish a market on his own land—Regulation No. XXII of 1793, Regulation No. VIII of 1892, section 9—There is no legal objection to the holding by any person of a "hat" or market whenever and wherever he may please, provided that he does so on his own land and in such a way as not to be a nuisance to neighbouring landlords who have equal right with him. Knox J. & Dillon J.

Sukhdeo Prasad v Nihal Chand—29 All 740

Marriage—Presumption of its existence arising from cohabitation with habit and repute—Conditions precedent to its application—Practice—Point not submitted to either Courts in India raised before the Privy Council.—Before applying the general presumption of marriage arising from Cohabitation with habit and repute, it is necessary to make sure that there are the conditions necessary for its existence, viz, 1st there must be some body of neighbours, many or few, or some sort of public, large or small, before repute can arise; and 2nd, the habit and repute, which alone is effective, is habit and repute of that particular status which, in the country in question, is lawful marriage

Their Lordship of the Judicial Committee were unable to entertain a point urged by the appellants the same having been submitted in the conduct of the case to neither Court below. P. C.

Ma Ween Di v. Makin 10 Bom L. R. 41 = 12 C. W. N. of 220.

Master and Servant—Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for a criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of section 111—Indian Emigration Act (XXI of 1883), amended by Act X of 1902, secs 6, 107, 111—Where penal statute has been infringed by servants and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject matter and object. Chandavarkar & Heaton J. J.

Emperor v. Javanjis 31 Bom. 611.

Minor—Principal and Agent—Accounts—Advances made by agent—Benefit of minor—application of advances—He who seeks equity must do equity.

When a minor on attending majority comes to Court to have an account taken as between himself and his agent, and it is found on taking that account that the agent has made certain advances to the guardian, the only person to whom he could make them as representing the minor and these have been applied for the minor's benefit, the agent ought to be allowed those advances in taking the account. *Maclean C. J. & Holmwood J.*

Surendra Nath v. Atul Chandra 7 C. L. J. 87.

Oaths Act, Sec. 8, 9, 12—Agreement between parties that on plaintiff's failure to take the oath suit should be dismissed—Plaintiff's failure to take the oath—Practice—Where the parties to a suit agreed that the plaintiff should take an oath and on his failure to do so the suit should be dismissed and the plaintiff refused to take the oath. Held, that the agreement could not be regarded as an adjustment of the suit and was not enforceable and the proper course for the court was to proceed with the suit.

Per Miller J. It is doubtful whether section 12 of the Oaths Act is intended to apply to a case in which the parties have arrived at an agreement that one of them shall take an oath.

Per White C. J. A party who offers to take an oath under sec. 8 or agrees to take an oath in response to the offer of the other party to be bound there by under s. 9 cannot be compelled to do so. If he refuse the Court should record the nature of the oath proposed, the fact of refusal and reasons therefore.

White C. J. & Miller J.

Majan v. Pattakutti 3 M. L. T. 68

Oudh Estates Act—Birt zamindari rights—Rights of persons holding under proprietary rights in villages under taluqdars before annexation of Oudh—Policy of Government under Record of Rights Circular No. 2 of—Heritable and Transferable rights.—The defendants either by themselves or their predecessors in title, had from before the annexation of Oudh held under-proprietary rights (known as birt or birt zamindari rights) in villages in the taluqa of which the plaintiff was the taluqdar. In the Record of Rights Circular, No. 2 of 1861, the policy of the Government was declared "that the birtias who were found in direct engagement with the State at annexation, or who have uninterruptedly held whole villages on the terms of their patta under the taluqdars must be maintained in the full enjoyment of their rights in subordination to the taluqdars." In a suit by the

taluqdar to recover the villages.

Held, on the evidence and under the circumstances of the case, that the defendants had shown themselves to come within the benefit of the policy declared in the above circular, and had therefore acquired, upon the annexation of Oudh by the British Government, heritable and transferable rights, as against the plaintiff in the villages in suit. P. C.

Muhammad Mumtaz Ali Khan v. Murad Baksh, 29 All 708.

Partition Act (IV of 1893) sec. 2—Decree for partition—Power of Court to order sale instead of division—Section 2 of the Partition Act, which gives the court power to order sale instead of division in partition suits, applies equally where the court has to pass a decree in suit for partition, as also when the Court has already passed a decree directing partition in a particular mode, and the mode becomes impracticable or inexpedient. *Kadi Pacha v. Abdul Rahim* (1901) 1 L. R. 24 Mad. 609 and *Hirama v. Racha Charan* (189) 5 C. W. N. 125 followed.

Chandavarkar & Heaton J. J.

Re Hirakore v. Trikandras 10 Bom. L. R. 23

—S. 4—*Scope of*—It is only where the suit is for partition, that a member of the joint family may buy out the plaintiff, under sec. 4 of the Partition Act. He is not entitled to do so when the suit has been decreed and the decree for possession is being executed.

Maclean C. J. & Geidt J.

Kali Kumar v. Brahmanand 7 C. L. J. 98

Partition suit—Preliminary decree—Partition of part by mistake or consent of co-owners, effect of—Possession joint, suit for—Possession by one co-owner, when adverse—Onus of proof—Nature of possession when adverse title set up by one co-owner—User, acts of—Constructive possession, doctrine of.—Partition is the division made between several persons, of joint lands which belong to them as co proprietors, so that each becomes the sole owner of the part which is allotted to him. The mere definition of the shares of the joint proprietors, does not amount to partition of the property although such determination may effect a severance of the joint interest. To effect a partition, the property must be transformed into estates in severalty, and one of such estates assigned to each of the former occupants for his sole use and his sole property.

The effect of the preliminary decree in a suit for partition is not to effect a partition of the disputed lands.

Although a co-owner can not enforce a partition of a part only of the

common lands leaving the rest undivided, and although the entire property must be included in the partition, yet if by mistake or by consent of the co-owners, acting innocently and fairly, a partition of a portion only of their estate has been made, whether by order of the Court or otherwise, there is no reason why the Court should not grant a division of the remainder at the instance of one or more of the co-owners.

Hence where by mistake of both parties, some lands were excluded from the report of the Commissioner and were not dealt with by the final decree in the partition suit the effect of the decree was to leave untouched the joint title and possession of the parties, and a suit for recovery of joint possession was maintainable.

Mookerjee & Caspersz J. J.

Jogendra v. Baldev Das 6 C. L. J. 735.

Pensions Act, s. 4—Grant for charitable purposes—Government—order imposing full assessment—S. 4 of the Pensions Act applies only to personal grants and endowments for religious or pious purposes do not fall within the purview of the section.

Penson & Sankaran Nair J. J.

Vencatswar v Secretary of State 3 M. L. T. 105

Possession—Suit for—Onus of proof—Nature of evidence to be adduced by either party—Title, proof of, effect of—Presumption of—possession—Constructive possession—Survey map, value of, as evidence—In respect of a jungle and hilly land possession must be presumed to be with the rightful owner.

Plaintiff in an action for ejectment must not only prove his title but also his possession, actual or constructive, within 12 years of suit. When plaintiff has established his title it is not necessary for the Defendant to prove a better title or establish that he has acquired a good title by adverse possession which has extinguished the title of the plaintiff but plaintiff must prove his possession also within 12 years.

Nature of evidence required in such cases discussed.

Mookerjee & Caspersz J. J.

Mirza Shomshu v. Munshi Kunj 12 C. W. N. 293

Practice—Suit for possession—Failure of cause of action—Proper decree to be made—Collateral issues, Court's power to decide and pass declaratory decree—When the plaintiffs asked for possession of their mother's property on the ground that she was dead and the Court held that it was not proved that the lady was dead the only decree that could be made was that the suit be dismissed. The mere circumstance that some of the media

concludendi might be the same in other actions did not vest the court with any right or duty to pronounce upon them. P. C.

Mussummat v. Jageshwar 12 C. W. N. 227

———*Question of the limitation set up in appeal.*—The question of limitation, raised in the written statement but abandoned in the Court of first instance, is a clear question of law, and it could be raised in the court of appeal.

Abdulla v. Ashraf 7 C. L. J. 152.

———*Refusal by counsel to urge a question—effect of.*—Refusal by a counsel or pleader to urge a question of law is a mere admission of law which is not binding upon the party, and the party may raise the question in appeal although not raised in the lower Court, specially where the question of limitation obviously arise upon the admitted facts of the case.

Stephen & Moskerji J. J.

Abdullah v. Asraf 7 C. L. J. 152.

———*Relief granted which was not asked for by the plaintiffs—Appeal—Court fee.*—The plaintiffs in a suit for sale on a mortgage were granted by the first Court a relief for which they had not asked and which could not properly have been granted to them without an amendment of the plaint. On appeal by one of the defendants the appellant was made to pay an additional court fee, corresponding to the relief granted to the plaintiffs. The plaintiffs respondents were also required to make good the deficiency in the court fee paid in the first Court. This the plaintiff declined to do unless the decree was confirmed in its entirety. *Held* that the plaintiffs were not entitled to retain the full benefit of the first Court's decree nor liable to pay the additional court fee; and the appellant might on application to the proper authority obtain a refund of the excess court fee which he had been erroneously compelled to pay.

Stanley C. J. & Buskitt J.

IndarSen Singh v. Bikhai Singh, A. W. N., 1908, 31.

Pre-emption—Mortgage.—Property purchased by vendee subject to an unregistered mortgage—*Pre-emptor bound to take the property subject to the mortgage.*—Property the subject of a suit for pre-emption was purchased by the vendee subject to an unregistered mortgage for Rs 99. *Held* that the pre-emptor must take the property subject to this unregistered mortgage irrespective of the question whether he had notice of it or not.

Stanley C. J. & Burkitt J.

Tejpal v. Girdharilal, A. W. N., 1908, 42.

Pre-emption—Vicinage—Mohalla Jatotian Lahor City—Two houses adjoining one another sold together, one adjoining vendee's house and other pre-emptor's house—One edifice divided into two houses—Distinct properties—Pre-emptor not bound to take over whole bargain—Held, that custom of pre-emption on the ground of vicinage exists in Mohalla Jatotian Lahore City as regards house property.

Held, also that when two houses adjoining one another are sold together of which one adjoins the vendee's house at the back and the other adjoins the house of the pre-emptor, who is next neighbour of the vendor, the pre-emptor is entitled to get the house adjoining, his.

Held, further that in the case of dividing one edifice of one house into two houses those are to be considered two distinct properties for the purposes of pre-emption and when they are sold together the pre-emptor, whose rights extends to one of them only, is not obliged to take over the whole bargain.

Johnstone & Hurry J. J.

Uttamchand v Lala Lahori 2 P. W. R. 464.

Registration Act, Secs. 17, 21, 49—Attorney, power of, to create a charge on immovable property—Where a power of attorney was executed by A in favour of B to enable B to recover the rents and profits of the properties of which A was the administrator, in order to pay of an amount advanced by B to A as such administrator.

Held, that in as much as the document was entered in Book IV instead of Book I, it was not registered according to the provisions of the Registration Act, and therefore could not affect immovable property.

Macleay C. J. Harington & Fletcher J. J.

Srimati v. Jain Sirdar 7 C. L. J. 149 = 12 C. W. N. 316.

Res-Judicata—Two appellate decrees in similar terms—Appeal from one of such decrees only—Res judicata. From the decree in a suit for adjustment of accounts both parties appealed. Both appeals were decided by one and the same judgment. Two decrees were framed; but these were in substance identical. The plaintiff appealed from the decree in one appeal only. *Held* that his appeal was not barred by reason of his not having appealed also from the decree in the other appeal. *Mariam-nissa Bibi v. Joynab Bibi*, 33 Cal, 1101 and *Panchananda Velan v. Vaithinatha Sastrial*, 29 Mad, 333, followed.

Richards & Griffin J. J.

Damodardas v. ShevRam 29 All 730.

Reversioner—Estoppel—Res-judicata—Compromise by father of reversioner—Son bound by father's compromise—The father of the pre-

sent plaintiffs Nos. 1, 2 and 3 and plaintiffs Nos 4 and 5 had filed a suit contesting an alienation made by a widow and entered in to a compromise with her in good faith under which they received some property and gave up all claims as regards balance.

Held, that the plaintiffs were thereby barred from contesting a subsequent alienation.

Robertson & Lalchand J. J.

Devi Dial v. Uttam Dene, P. L. R., 1907 No. 120

Service tenure—Digwar of Ghat Tasra in Jheria—Police duties—Government control—Rights of the Zemindar—Right sub-soil—Mokura-ri lease of under ground—Rights granted by Digwar, suit by Zemindar questioning Government a necessary party. The Digwar of Tasra and Baharaband in Jheria has been holding under a tenure which is ancient and hereditary, subject to the payment to the Zemindar of a fixed rent only, and on condition of the performance of certain police or public services for the due discharge of which the holder has been responsible to the Government which alone has exercised the power of appointment to and dismissal from office.

His position is analogous to that of the Ghatwals of Birbhum.

The underground rights including mining rights belong to the Digwar, the right to receive the fixed rent alone being reserved to the Zemindar. *Sriram v. Kumar*, 10 C. W. N. 425; S. C., 3 C. L. J. 56, (1905) followed.

Government has an interest in maintaining intact the mouzabs set set apart for the remuneration of the Digwar, and it has all along assumed itself to possess the right to do so.

Where therefore the Zemindar instituted a suit against the Digwar with the object of establishing his exclusive right to the sub-soil and minerals.

Held, that the Government was a necessary party in the suit.

Brett & Sharfudin J. J.

Brojo Nath v. Raja Sri, 12 C. W. N. 193.

Transfer of P Act S. 52—*Lis pendens*—Hindu Law—Hindu widow—Mortgage of husband's estate adversely to adoptive son—Suit to enforce mortgage against adoptive son—Contentious suit—Application for leave to sue in forma pauperis—Civil Procedure Code, s. 410—A mortgage of part of her late husband's estate was executed by a Hindu widow in defiance of the rights of her husband's adopted son, and in fact in collusion with the mortgagee and in order to deprive the adopted son of his adoptive father's estate. Shortly before this mortgage was executed by the widow the adopted son had applied for leave to sue in forma

pauperis for the recovery of his adoptive father's estate. *Held*, on suit by the mortgagees to enforce their mortgage against the adopted son, then in possession, that the suit must fail, both because the fact of the estate having to some slight extent benefitted by the money borrowed was not sufficient under the circumstances to make the mortgage enforceable against the adopted son—and also because of the application of the doctrine of *lis pendens*.

Stanley C. J. and Burkitt J.

Ambika Partap Singh v. Dwarka Prasad, A. W. N., 1908, 29.

—————**S. 54—Sale—Non-payment of consideration—Sale nevertheless complete.**—In a sale of immovable property non payment of the purchase-money does not prevent the passing of the ownership of the purchased property from the vendor to the purchaser, and the purchaser can, notwithstanding such non-payment, maintain a suit for possession of the property. *Shibh Lal v. Bhagvan Das* 11 All., 244. *Umedmal Motiram v. Davu* 2 Bom., 547, and *Sagaji v. Namdev* 23 Bom., 525, followed.

Stanley C. J. & Bannerji J.

Baij Nath Singh v. Paltu, A. W. N., 1908, 38.

—————**S. 55—Vendor, lien of unpaid—Lien is not possessory but only a charge—Adverse possession**—The lien of the unpaid vendor of land under section 55 of the Transfer of Property Act is nonpossessory. He has only a right to retain the title-deeds and to a charge for the unpaid purchase money, but he cannot retain possession of the property sold against the vendee.

Whitt C. J. & Wallis J.

Velayutha Chetty v. Govindasawmi Naiken 30 Mad, 524.

—————**S. 85—Mortgage, suit by—Notice—Absent party's interest when bound—Representation, sufficient—Limitation Act, Sch. II, Art. 12 (a), applicability of**, Where the mortgagee, who has no notice of the existence of a minor heir of his mortgagor, brought a suit against the major son.

Held, that the right of the person not made a party to the mortgage suit is bound by the decree, and his interest will pass at the sale held in execution of the decree.

Held also, that in the suit by the mortgagee, the estate of the mortgagor was sufficiently represented, as the person against whom the suit was brought was alone in possession of the mortgaged property and was the *de facto* manager of the mortgagee's estate.

The estate of a deceased-dobtor can be represented by one member of the family, and judicial sales cannot be disturbed on the mere ground, that some members of the family who were minors, were not made parties to the proceedings, if it appear that there was a debt justly due by the deceased, and no prejudice is shown to the absent minors. *Khiarajmal v. Daia*, L. R. 32 I. A. 23; 32 Cal. 296 at 314 followed.

Per Sherrfuddin J.—A person who was not made a party to the suit on a mortgage owing to the ignorance of his existence, must first seek to set aside the sale held in execution of the mortgage decree in order to clear his ground for the redemption of his mortgage. One year's limitation prescribed by article 12 (a) of Schedule II of the Limitation Act applies to such a case.

Rampini & Sharfuddin J. J.

Ram v. Rameswar, 6 C. L. J. 719.

———**Ss. 89, 104—Mortgage decree—Execution—Adjustment—Power of Executing Court to enforce—Civil Procedure Code, Ss. 244, 258.** After the order absolute for sale was passed the mortgagee agreed upon receipt of certain sums of money to give up his claim for compound interest and to allow a certain remission. *Held* that the court executing the decree was competent to give effect to the adjustment

Stephen & Mookerjee J. J.

Harish Chandra v. Jagbandhu, 12 C. W. N. 282.

Trust—Religious endowment—Uncertainty—income of villages to be applied to “charitable purposes” at a dharamsala which the settlor had founded.—By a deed of trust or *bhentnama*, the owner of seven villages settled the income thereof to the extent of Rs 500 a month to be applied to “charitable purposes” at a dharamsala which he had founded. In course of time one of the villages mentioned in the deed of trust was alienated by a person who was at the time acting as trustee. *Held*, on suit by the trustees to have the sale cancelled and to recover possession of the village, (1) that the trust was not void for uncertainty, and (2) that it was not competent to the court in the suit as framed to declare that the village in suit was charged with a proportionate part of the total income of the seven endowed villages. *Runchordas v. Parvatibai* (I. L. R., 23 Bom, 725) referred to. *Stanley C. J. & Burkitt J.*

Gordhandas v. Chunnilal A. W. N. 1908, 34.

United Provinces Land Revenue Act, Ss. 75, 76 and 78—Inferior proprietor—Liability for payment of Government revenue.—Where, under a special contract recorded in the khewat, certain persons, who were inferior proprietors, were only bound to pay a small portion of the Government revenue assessed on the land held by them, it was *held* that the inferior proprietors could not be made to pay any more until a settlement had been made with them under section 76 or 78 of the Land Revenue Act, 1901.

Banerji J.

Mata Ratan v. Mahabir Misr, A. W. N. 1908, 27.

U. P. Land Revenue Act (III of 1901),—Local—sec. 76, 77—Superior proprietor—Contract for revenue with inferior proprietors—effect

of enhancement of revenue.—A contract was entered into between a superior proprietor that the revenue to be paid for certain land by the inferior proprietor would be Rs. 48. The revenue of that land was at the time of subsequent settlement enhanced. Held, that the inferior proprietor was not liable to enhanced revenue, so long as the superior proprietor did not take steps and get the contract rescinded, and until by an order under sec. 76 or sec. 78 a sub-settlement was made with the inferior proprietor.

Banerji J.

Naubat v. Narain 4 A. L. J. 807.

United Provinces Land Revenue Act, ss. 144, 84 (b)—*Agra Tenancy Act s. 152*—*Lambarder and co-sharer—Remuneration of lambardar*—Held, that in a suit for profits by a co-sharer against a lambardar that the defendant lambardar would generally be entitled to set off both lambardari dues and villages expenses. The 5 per cent lambardari dues provided for by section 144 of the Land Revenue Act would not cover villages expenses, which are separately provided for by section 159 of the Tenancy Act.

Griffin J.

Pohkar Singh v. Gulab Kunwar A. W. N. 1908, 2.

United Provinces Municipalities Act, s. 3 (4)—*Definition—"Street"*—Held, that a lane which, though at one time private property, had been for upwards of thirty years used by the public generally and had been lighted, drained and swept by the Municipality, was a "street" within the meaning of section 3 of the Municipalities Act, 1900, and was not the less a street because it happened to be a cul-de-sac,

Knox & Aikman J. J.

Municipal Board of Bulandshahr v. Dakkhan Lal, A. W. N. 1908, 15=5 A. L. J. 45.

——— **Ss. 82, 87 (3)**—*Application for permission to build—Implied permission—Power to erect necessary scaffolding*—Where application for permission to build has been made to a Municipal Board and the period mentioned in section 87 (3) of the Municipalities Act, 1900 has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the Board. A sanction, express or implied, to the erection of a specified building necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work.

Richards J.

Emperor v. Gokul, 29 All 708

Vendor and Purchaser—*Auction sale under power of sale in a mortgage—Condition of sale depreciatory of mortgagor's title—Solicitor of mortgages acting for purchaser in preparation of deed of conveyance*

—*Constructive notice—Conduct of mortgagees at sale inducing bidders to leave—Knowledge of purchaser of such circumstances—Notice—Proviso in mortgage to protect purchaser—Transfer of Property Act Sec. 69—*At an auction sale under a power of sale in a mortgage on conditions one of which both the lower Courts found to be a depreciatory condition wholly unwarranted by the state of the mortgagor's title the mortgaged property was knocked down to the appellant who the same day signed a written contract to purchase. In a suit by the purchaser against the mortgagor for possession of the property, to which suit the mortgagees were made parties, *Held* that the purchaser was not affected with constructive notice of the true state of the title by reason of the fact that some days after the contract of sale was completed, he instructed the mortgagee's solicitor to act for him in the preparation of the deed of conveyance, and that the solicitor knew that the condition of sale was unjustifiable. The knowledge of the solicitor as to the title was not acquired in the matter for which he was the purchaser's agent and could not be used to upset a transaction of a date before that agency commenced. The sale was therefore not invalid on that ground.

The mortgage which was in the English form contained a proviso that upon the exercise of the power of sale "the purchaser shall not be bound to see or inquire whether any default has been made, or otherwise as to the necessity or expediency of such sale, or that the sale is otherwise improper or irregular, and notwithstanding any such irregularity, such sale shall, as far as regards the safety and protection of the purchaser be deemed to be within the aforesaid power, and be valid and effectual accordingly, and the remedy of the mortgagor shall be in damages only." It was found by the first Court on the facts that at the sale the mortgagee defendants by themselves or their agents so conducted themselves with reference to the sale that bidders were induced to leave, and that the purchaser was present and had notice of these circumstances

Held, that the purchaser was affected with notice of the impropriety of the sale, and bought at his own risk, notwithstanding the proviso in the mortgage and the provisions of section 69 of the Transfer of Property Act and that these circumstances invalidated the sale (P. C.)

Chabildas Lallubhai v. Dayal Mowji 31 Bom. 566

Will—Construction—Meaning of "Bapika Vanshamanthi."—The testator gave by his will a power to his widow to adopt a son to him from a class described as "*Mara Bapika Vanshamanthi.*"

Held, on a construction of the expression, that it meant "from amongst my paternal agnates, "and not" from amongst the descendants of my father.

Jenkins C. J. Chandavarkar J. & Heaton J.

Dayabhai v. Chunilal 10 Bom. L. R. 97.

THE LAWYER.

1st APRIL 1908.

Part I

DIGEST OF RECENT INDIAN CASES (CIVIL)

Agra Tenancy Act, s. 32—Expropriatory holding—Suit for possession of half of an expropriatory holding.—The plaintiffs sued to recover possession of one half of an expropriatory holding, and added a prayer for "any other relief which might in the opinion of the Court be deemed just and proper." *Held* that the suit for possession of half of the expropriatory holding would not lie, being opposed to section 32 of the Agra Tenancy Act, 1901; but that, on the finding that the plaintiff's share in the holding was one half, the plaintiffs were entitled to a decree for joint possession.

Bannerji & Aikman J. J.

Ashiq Husain v. Asghari Begam, A. W. N. 1908, 21.

Arbitration Act—Sections 11, 14 and 15—Order enforced as a decree—Appeal not allowed—Revisional powers of High Court.—*Held*—No appeal lies against an order passed under the Indian Arbitration Act, refusing to set aside an award. There is nothing in the Act itself, or in the rules framed under it to warrant such a right; but in fit cases the Court will interfere in exercise of its revisional powers under Section 622, C. P. C.

(F. B.)

Ghumanmal v. Dayal Kanji 1 Sind L. R. 86.

———**Section 13, 14—Technical Misconduct.**—*Remitting back.*—Where an award filed under the Indian Arbitration Act was objected to on the ground of technical misconduct of the Umpire but no imputation of dishonesty was alleged against him, *held* that in view of sections 13 and 14 of the Act, the Court was competent to remit back the award to him for reconsideration.

Lucas & Hagward J. C.

Rewachand v. Verhomal 1 Sind L. R. 116.

Assignment of debt—Plea of want of consideration—Debtor not prejudiced by the assignment.—An Assignee of a debt suing the debtor

cannot be defeated by a plea of the latter that the assignment was without consideration, unless, it is established that the assignment was intended to defeat the provisions of an act, and affected the person impeaching it, or in other words that it amounted to a fraud practised on him.

Lucas & Knight J. C.

Waliram v. Menghomal 1 Sind L. R. 60.

Bengal Embankment Act (II B. C. of 1882), sec. 76—Offence—under.—Adding to embankment, Sec. 76 of the Bengal Embankment Act (II B. C. of 1882)—prohibits not only the construction of new bund but adding to old bundhs so as to obstruct the flow of water.

Ranpini & Sharfudin J. J.

Dwarka Nath v. The Emperor 12 C. W. N. 344.

Bengal Tenancy Act sec. 87—Not exhaustive—Abandonment, a question of intention—Mortgage of non-transferable holding—Mortgage auction Purchaser—Mortgagor, interest of—Ejectment of purchaser by landlord—Re-entry—Execution sale—Voluntary abandonment—The first sub-section of sec. 87 of the Bengal Tenancy Act shows that abandonment is the effect of the act of the tenant in vacating the holding without making arrangement for payment of his rent as it falls due, and for cultivating the land.

Whether there is abandonment or not in any individual case is a question of intention to be determined upon the facts of the particular case. In order to effect a legal abandonment and to allow a valid re-entry by the landlord, service of notice under sub-section 2 of sec. 87 of the Bengal Tenancy Act is not necessary. The only effect of the service of notice is to make it obligatory upon the tenant and to have a speedy determination of the question whether there has been an abandonment or not. Sec. 87 of the Bengal Tenancy Act is not exhaustive and a landlord is not a wrong doer merely because he re-enters upon the holding before he has followed the procedure laid down in that section.

When the holding is a non-transferable one, and the ryot executes a mortgage, the mortgage is inoperative against the landlord, but as between mortgagor and mortgagee, the mortgage is operative.

Where the mortgagee of a non-transferable occupancy holding purchases the holding in execution of his mortgage decree and takes possession, the possession of the tenant mortgagor completely ceases, and the holding passes into the occupation of the mortgagee. As against the landlord, the mortgagee auction purchaser is a trespasser. The landlord is

entitled to sue him, and to obtain a decree for ejectment; in such a suit the tenant who is not in occupation is not a necessary party.

Under the circumstances of the case, the abandonment of his holding by the tenant although due to the execution sale, is a voluntary one.

Mookerjee & Caspersz J. J.

Ram Prasad v. Jawahir 7 Cal. L. J. 73.

—————**Sec. 87.—Non-transferable ryot holding—Transfer—Under lease—Forfeiture—Landlord and tenant—SEI'UNDUM ALLEGATE ET PROBATA.**—Where a raiyot holding a non-transferable holding-transfers it to a third person, but remains in occupation of the land as his vendee's under-raiyot, repudiates his relation as tenant, refuses to pay rent to the land lord of the raiyoti holding and maintains his right to transfer a non-transferable holding and seeks by suit to re-occupy the land not as his (landlord's) tenant but as the under-tenant of his vendor, his suit must fail. The case is not one of abandonment under sec. 87 of the Bengal Tenancy act. *Sristidhur v. Madan* 9 Cal. 648. *Robert v. Radhu* 1897, 22 W. N. 63. *Din Nath v. Krishna* (1904) 9 C. W. N. 379. & *Madan Mondal v. Mahima* 33 Cal. 531. explained and distinguished.

If the ryot transferee is willing to revert to the former state of things, to re-occupy the land and pay rent to the land lord, then a suit for possession is maintainable against the land lord.

The transferee of a non-transferable rayoti holding is not a tenant of the landlord and has no legal connection with the land. The provisions of sec. 87 of the Bengal Tenancy Act are not exhaustive. *Samujan v. Munshi* (1900) 4 C. W. N. 493 followed. *Rampini & Sharfuddin J. J.*

Rajani v. Ekkari 7, Cal. L. J. 78.

—————**Sec. 143—Suit For rent—aggregate rent—Aggregate area—Single-suit—Maintainability of suit—Execution of decree**—A landlord is entitled to bring one suit for the total rents of three, separate holdings giving the total area as the sum of the holdings. He is not bound to bring three separate suits. The suit is maintainable, though the landlord may have difficulty in executing the decree obtained in it under the special procedure prescribed in the Bengal Tenancy Act.

Holmwood & Sharfuddin. J J.

Nandu Lal v. Sadhu Charan 7 C L. J. 96.

—————**Arrear of putni rent due to a co-sharer—Zamindar—Suit by him under Act VII of 1885 to recover the whole rent of the tenure—Refusal of his co-sharer zamindars to join him as plaintiffs to bring the same—**

*Law applicable to the case—Agreement to pay shares in the putni rent separately—Its effect on the right to sue and on the tenure—*The appellant, a co-sharer in a zemindari interest in consequence of the putni rent falling into arrear so far as the share which should have come to him was concerned brought a suit making the putnidars defendants and joining as co-defendants his co-sharers in the zemindari on the ground that they refused to join him as plaintiffs. The suit was framed as one under the Bengal Tenancy Act to recover the whole rent of the tenure and for that purpose to bring to sale the tenure itself. The plaint also asked in the alternative for a decree for the appellant's share of the rent.

Held, that the appellant was competent to bring a suit, under the Bengal Tenancy Act, for the whole rent due in respect of the property in suit.

Held, also that the law applicable to the present case must apparently be, that by the express terms of the Bengal Tenancy Act in the event of the rent being unpaid the owners of the zemindari interest were entitled, by suit under that Act, to bring a putni to sale, with consequences prescribed by that Act, and it was a general rule, a rule not derived from the Bengal Tenancy Act, but from quite another branch of law, namely, the general principles of legal procedure—that a sharer, whose co-sharers refuse to join him as plaintiffs, could bring them into the suits as defendants, and sue for the whole rent on the tenure, unless there was something to exclude the case from the operation of those rules. *P. C.*

Raja Pramda v. Raja Ramani, 10 Bom. L. R., 66 = 3 Mad. L. T. 151.

———**Sch. III, Art. 2 (b)—Limitation of rent suits—Fuslee year**—*Rent due on the last day of Bhadra—Period of limitation.* The period of limitation where the Fuslee year prevails is three years from the last day of Jeith. If any instalment is due on the last day of Bhadra, the period of limitation will expire on the day of Jeith in the third subsequent year so that in such a case, the suit must be brought not within three years but within two years and nine months.

Mitra & Ormond J. J.

Ishwardhari v. Ram Brich, 7 C. L. J. 106.

Bundelkhand Encumbered Estates Act, Ss. 2 and 12—Joint decree—Execution of decree—Effect of some out of several joint judgment-debtors taking advantage of the Act. Five out of six joint judgment-debtors took the benefit of the Bundelkhand Encumbered Estates Act, 1903. A notification was issued under the Act, but the decree-holders did not make any claim within the time prescribed. *Held* that

the decree-holders could not recover from the judgment-debtor who had taken advantage of the Act anything more than his proportionate share of the judgment debt. *Aikman & Karamat Husain J. J.*

Makund Rao v. Janki Bai, A. W. N., 1908, 43.

Burma (Lower) Village Act, S 13 A.—*Pwe—Music and dancing Ayein-pwe.* The accused held an entertainment described as an ayein-pwe, at which two of the girls danced and music was played. Held, that in the absence of special notification under clause (3), such an entertainment is not a pwe within the meaning of S. 13 A. of the Lower Burma Village Act, 1882, as amended by Burma Act II of 1904. *Fox C. J.*

King Emperor v. Nga Pya, 1 Cr. L. Re. 439.

Chaukidari Chakran Act (VI of 1870,) S. 51.—*Chaukidari Chakran lands—Resumption, sublease before—Resumption, effect of Zemindari Chaukidar—Collector—Lease by.* When Chaukidari lands are resumed by Government and settled with a Zemindar, all rights created in such lands by the Chaukidar in favour of third parties, come to an end; but if any transfer has been made by the Zemindar or before the resumption and the land is settled with him by the Collector, the transferee would be entitled to the benefits of such settlement

If any transfer is made by the Collector, acting for and in behalf of the Chaukidar, such transfer also ceases to have effect after the settlement. *Mitra & Caspersz J. J.*

Krishna v. Mohunt, 7 C. L. J. 85.

Civil Procedure Code, s. 13—*Res judicata—Finding essential to the decision of the Court though not embodied in its decree.*—A finding which is essential to the decision of the Court may, when the order which is based upon it has become final, constitute a *res judicata* notwithstanding that the finding is not embodied in the decree of the Court. *Shib Charan Lal v. Raghunath* 17 All., 174 distinguished. *Stanley C. J. & Burkitt J.*

Sheikh Alam v. Parmanand, A. W. N., 1908, 41. = 5 A. L. J. 48.

———**Sec. 32—Parties—striking off of defendant after first hearing.**—Held, that a Court is not competent to strike off the name of a defendant as a party to the suit after the first hearing.

Rattigan J.

Fatch Ali v. Nizam Din 9 P. L. R. 96.

———**Section 32—Non-joinder of Parties—Opportunity to be given to plaintiff.**—Where the Court of first instance held that the suit

was not bad for non-joinder of proper parties and decreed the plaintiff's claim, and on appeal the 1st Appellate Court held against the plaintiff on that issue and dismissed the suit. *Held*, that section 32 C. P. C. authorises the Court to order the joinder of proper parties at any time, and that the first Appellate Court should, under the circumstances, have given the plaintiff an opportunity of joining the necessary parties.

Lucas & Crouch J. C.

Maidinomal v. Motai Rrshid, 1 Sind, L. R. 90.

———**Section, 36, 63—Appearance through a pleader not duly instructed—Proceedings ex parte.** Where on the day of hearing of objections to an award, a pleader duly appointed by the objector appeared in Court and stated "My client is not present here, nor has he summoned any witnesses, nor has he written to me any instructions. The Court will note my appearance, the Court will dispose of the case as it thinks fit." *Held*, that the proceedings held thereon were not ex-parte. Though by summons issued under Section 64, C. P. C. the defendant is warned to appear by a pleader duly instructed, he may neglect his warning and appear by one who is only duly appointed but not duly instructed.

Lucas & Crouch J. C.

Hiromal v. Hariram, 1 Sind, L. R. 115.

———**sec. 53—Specific Relief Act. sec. 42—Amendment of plaint—Declaratory suit—Plaintiff omitting to pray for further relief.**—It is most desirable, whenever possible, that Courts should settle the dispute that has arisen between the parties, and, if necessary, plaint may be allowed to be amended.

When the appellate Court dismissed the claim on the ground that the plaintiff had omitted to pray for further relief, the Chief Court, on revision, set aside the order of dismissal and ordered re-trial of the appeal after allowing amendment of the plaint.

Clarke C. J.

Hazara v. Bishen Singh 9 P. L. R. 145.

———**Ss. 103, 311, 538 and 647—Appeal from an order refusing to set aside the order dismissing an application for setting aside the sale in default.**—*Held*, that no appeal lies against an order rejecting an application under s. 103 of the Civil Procedure Code for reviving an application under s. 311 of the Code dismissed for default.

Greevan J. C.

Musammal Sobaran Kuar v. Ude Sah 10 O. C. 353.

———**Section 113**—*Written statement filed late by one day—Discretion improperly exercised—Revision—Provincial Small Causes Courts Act, Section 25.* Where the defendant filed his written statement one day after the date fixed by the Court for filing the same, but 13 days before the day of hearing, and the Judge passed a decree against the defendant under Section 113, C. P. C., *held*, that the judge had exercised discretion vested in him by the Section in a most unreasonable manner, and his order could not be upheld. *Lucas & Hagward J. C.*

Tejmul Darmumal & others v. Haridas Asnamal, 1 Sind, L. R. 131.

———**Secs. 132, 139, 584**—*Documents not mentioned in list filed with plaint—Discretion of court in excluding* When a plaintiff seeks to produce documents at the trial which he had failed to mention in the list annexed to the plaint, the Court has a discretion under S. 139 of the Q. P. Code, whether to receive or reject them. But in exercising this discretion the Court has to bear in mind that the section was enacted to prevent fraud by the late production of suspicious documents and not to shut out formal evidence beyond suspicion such as certified copies of public documents or records of judicial proceedings. *Syed Ibram*, 23 W. R. 29; *Ranchod*, 23 Bom. 173 relied upon.

Unless called upon by the Court it is not obligatory upon the plaintiff to produce documents on which he relies but, which he has not filed with the plaint at the first hearing when issues are framed.

Mookerjee & Caspersz J. J.

Talewar Singh v. Bhagwan, 12 C. W. N. 312.

———**Sections 202, 623**—*Judgment—Clerical errors Review not necessary.*—When inadvertently wrong words are used in a judgment in describing the property in suit the corrections may be made on an application under sec. 206 of the C. P. Code and an application for review is not necessary to do so. *Chatterji J.*

Mula Ram v. Barhmi 9 P. L. R. 104.

———**Sec. 230 cl. (b).**—*Instalment decree—default in first instalment—Amount payable at once.*—Where an instalment decree provides that in case of default of any one instalment, the whole sum "remaining due to be recoverable at once," limitation runs from the date of default and an execution application filed more than 12 years from such default is barred under Section 230 cl. (b) Civil Procedure Code.

Lucas & Knight J. C.

Nek Muhammad v. Bhagwandas. 1 Sind L. R. 18.

———**Ss. 244, 278.**—*Personal decree against Shebait—Execution against debutter property—Suit to declare property debutter if maintainable.* A suit instituted by the Shebait of an idol to have it declared that property sought to be sold in execution of a personal decree against the plaintiff is the endowed property of an idol is maintainable. *Ramkrishna v. Mohant*, 6 C. W. N. followed.

Rampini C. J. & Sharfudin J.

Amarchand v. Nani Gopal, 12 C. W. N. 308.

———**Ss. 244, 278**—*Decree—Personal against Shebait—Claim to attached property on behalf of idol if may be tried in execution proceeding.* When immoveable property is attached in execution of a decree passed against a Shebait personally, the latter can object to the attachment on the ground of the property being debutter and the claim is triable under S. 244 of the C. P. Code. *Punchanon v. Rabia* 17 Cal. 711 followed in principle.

Maclean C. J. & Cox J.

Jogendra v. Govinda, 12 C. W. N. 310.

———**Secs. 244 and 318**—*Right to sue for possession—Auction purchaser*—An auction purchaser of the property in execution of his decree or his legal representative cannot maintain a suit for possession, sec. 244 of the Code of Civil Procedure being a bar to the suit. *Madhusudan v. Gobind* 27 Cal., 34, *Kattayat v. Raman* 26 Mad., 740, *Kalyan v. Thakur* 3 A. L. J. 234 (P. C.) 26 A. W. N. 87 followed. *Sheo v. Nur* 4 A. L. J., 434, 29 All., 463 reversed.

Stanley C. J. & Burkitt J.

Sheo v. Nur Mahommad 5 A. L. J. 20.

———**Sec. 244**—*Execution of decree—Resolution—Fresh suit—Plaint treated as application for execution of decree.* In execution of a decree for possession of equity of redemption by right of pre-emption, the mortgaged property was delivered to the decree-holder by mistake. The judgment-debtors had redeemed the mortgaged before the decree was passed. They as mortgagees now sued the decree-holder for actual possession and were met by the plea that the suit was barred by sec. 244 of the Civil Procedure Code.

Held, that the plea had no force, and that even if it were valid, the plaint could be treated as an application under sec. 244 of the Civil Procedure Code for restitution of property illegally delivered to the decree-holder.

Lalchand J.

Karam Chand v. Khuda 9 P. L. R. 57.

—sec. 257. A—*Agreement extinguishing the decretal debt—validity of—Held*, that the declared law in Sind during the last ten years had been, to regard the 2nd part of section 257-A, Civil Procedure Code, as not applying to an agreement under which the debt is no longer to be satisfied in its character as a judgment-debt.

Lucas & Crouch J. C.

Hasraj v. Mulomal 1 Sind L. R. 140.

—secs. 311, 312 and 533 (16)—*Execution of decree—sale—application to set aside sale dismissed for default—second application rejected—Order passed on second application not appealable.*—The property of a minor judgment debtor was sold in execution of a decree. His application to set aside sale filed after it was confirmed was dismissed for default. Then he applied (a) that the dismissed application be restored; or (b) that his present application be treated as a fresh application to set aside the sale or (c) that this be treated as an application for review. The prayers were not granted and the application was dismissed. On appeal against the order dismissing the second application, the District Judge set aside the sale.

Held, that no appeal having been made against the order confirming the sale and the orders on the two applications not being appealable, the District Judge had acted without jurisdiction. *Johnston J.*

Bishambar Das v. Udho Ram 9 Pun. L. R. 52.

—S. 331.—*Resistance or obstruction—Decree for partition—Decree for possession—Partition Act, S. 4.* When a person is held entitled to the possession of a share in certain property after partition, and a Commissioner is appointed to partition the property and put him in possession of his share, "resistance to such Commissioner is 'resistance or obstruction,' with the meaning of S. 331, of the Code of Civil Procedure to a decree for possession. *Maclean C. J. & Geidt J.*

Kali Kumar v. Brahmananda, 7 C. L. J. 98.

—S. 362.—*Parties—Death of sole appellant—All representatives not brought upon the record—Abatement of appeal.* The sole appellant, a Muhammadan, died pending the appeal leaving him surviving a widow, two sons and two daughters. The two sons applied to have themselves brought on to the record as appellants, but did not ask that their mother and sisters should be made parties to the appeal. An application to that effect made by the respondents was not acted upon by the lower appellate Court. Held that it was the duty of the sons to have brought

upon the record, either as appellants or respondents, the other representatives of their father, and, as they had not done so, the appeal abated. *Ghamandi Lal v. Amir Begam*, 16 All. 211 followed.

Stanley C. J. & Burkitt J.

Haidar Husain v. Abdul Ahad, A. W. N., 1908, 41—5 All. L. J. 62

—————**Sec. 373**—*Giving up one of the reliefs at the hearing to avoid misjoinder of causes action—effect of*—N filed a suit against A and others in the District Court, Karachi, for specific performance of a contract or in the alternative for return of money. At the hearing, the Court held that the suit was bad for misjoinder of causes of action and parties and asked N to elect one of the reliefs. N proceeded with his claim for specific performance and being non-suited, filed another suit against alone in the Small Causes Court, Karachi, for the recovery of Rs. 800.

Held, that having withdrawn a part of his claim without leave of the Court under Section 373, Civil Procedure Code, his fresh suit was barred.

Lucas & Crouch J. C.

Nurmahmed v. Aboobakar 1 Sind L. R. 29.

—————**S. 503**—*Receiver, when to be appointed. Held*: “In exercising the power under Section 503 Civil Procedure Code, the Court has a discretion which is governed by the circumstances of the case, and where one party is in possession the Court will not act unless the other party has shown a *prima facie* case.” *Pratt & Hayward C. J.*

Dero H. H. Mir Hussainali Khan v. H. H. Mir Abdul Hussien Khan, 15 Sind L. R. 121.

—————**S. 508**—*Arbitration—Order of reference not fixing a period within which the award is to be made—Appeal*. Where an order of reference to arbitration made by a Court omits to fix a date for the delivery of the award, such omission is not a mere irregularity, but is a defect fatal to the order and to all subsequent proceedings founded thereon. *Chuhamal v. Hari Ram* 8 All., 548 followed.

Stanley C. J. & Burkitt J.

Lachman Das v. Abparkash, A. W. N. 1908, 59.

—————**S. 522, 526**—*Private arbitration—Award made a rule of Court—Appeal*. When an award made in a private arbitration has been made a rule of Court and a decree passed thereon, no appeal will lie except so far as the decree is in excess of or not in accordance with the award. In this respect there is no difference between a decree based upon

a private award and a decree based upon an award made through the intervention of the Court. *Mustafa Khan v. Phulja Bibi* 27 All. 526 distinguished.

Bannerji & Richards J. J.

Bahadur Singh v. Negi Puran, Singh, A. W. N. 1908, 54.

———S. 525-526—*Appeal right of—Objection to award given up—New case made out—Held*, (1) The words in section 526, Civil Procedure Code, “and such an award shall then take effect as an award under the provision of this chapter” mean that the award shall be treated as an award which has reached the stage described in section 522, and that the procedure described in that section should be followed, in order to give effect to it. The decree is final under section 522, and the party against whom it is passed can only appeal against it, in order to have it amended in accordance with the award. But if the party objects that the award should not have been filed and adopted as a decree, he has an unlimited right of appeal both on facts and law; and so also if the Court has refused to file the award, a party may appeal to have the award filed.

(2) While dealing with awards under sections 525 and 526, Civil Procedure Code, it is no part of the duty of the Court to scrutinise the award, but it has only to deal with the objections filed by the defendant, and where the defendant has given up any of his objections in the Court of first instance, he cannot be allowed to fall back upon them and make new case in appeal.

Pratt & Crouch J. C.

Rupomal v. Dwarkamal 1 Sind L. R. 150

———S. 549—*Security for costs—Non-compliance with order for security—Order rejecting appeal—No appeal from such order—Held* that no appeal will lie from an order refusing to re-admit an appeal which had been rejected under section 549 of the Code of Civil Procedure on account of non-compliance with an order to furnish security for costs. *Lekha v. Bhauna* 18 All., 101 followed. *Kuar Balwant Singh v. Kuar Daulat Singh* (L. R., 13 L. A., 57) distinguished.

Aikman & Karamat Husen J. J.

Firozi Begam v. Abdul Latif A. W. N. 1908, 53=5 A. L. J. 109.

———S. 562—*Remand order, validity of—Appellant not allowed to challenge the validity of the decision on which remand made—Held* that in an appeal from a decree passed after a remand under S. 562 of the Code of Civil Procedure, an appellant cannot be allowed to re-open the decision on which the remand is made.

Ram Kuvairbai v. Damodhar Narbheram 6 B. H. C. 46 followed.
Griffin & Ohemiar J. C.

Ketpul Singh v. Sheo Prasad Singh 10 O. C. 350

———**Sec. 562, 566—Contract made on behalf of a minor—Joint Hindu Family—Remand.** The ruling in *Mohori a. Dharmo*, 30 Cal. 539 (P. Q.) only declares that a contract made by a minor is void and not voidable, and does not apply to the case in which a contract is entered into by persons of full age on behalf of a minor belonging to a joint family.

Where no new issues have to be framed, but only such of the issues as the first Court left entirely undecided are to be determined, the Court of appeal is justified in sending the case back under sec. 562, of the Code of Civil Procedure. *Mata Din v. Jamna Das*, 27 All, 691, referred to.

Banerjee & Richards J. J.

Meghan v. Pran Singh 5 A. L. J. 14.

———**Sec. 578—Procedure—Irregularity—Disposal of a suit on a Sunday.** Held that the fact that a suit was decided on a Sunday did not vitiate the decree. *Semble* that the Lord's day Act (21 Geo. III, Cap. XDIX) does not apply to India. *Stanley C. J. & Burkitt J.*

Sheoram Tiwari v. Thakur Prasad, A. W. N. 1908, 43.

———**Sec. 582—Death of plaintiff-respondent pending appeal—Substitution of legal representatives—Court's power to determine which person is the true legal representative.** Held that having regard to the words "as nearly as may be" and "as far as may be" in Section 582 Civil Procedure Code, Sections 365, 366 and 367 might be applied at all events analogically to the case so as to enable the Court to determine and bring on record the real legal representative of the deceased plaintiff-respondent and the Court could and should determine which of the applicants is the proper legal representative of the deceased plaintiff-respondent.

Lucas & Crouch J. C.

Gumbomal v. Tikamdas, 1 Sind L. R. 41.

———**Sec. 584—Erroneous exclusion of certified copies of public documents produced, in a suit though not mentioned in the list-filed with the plaint.** Where a Subordinate Court has refused in the erroneous exercise of its discretion to receive documentary evidence which ought to have been accepted the H. C. has ample powers to interfere under S. 584 C. P. Code. *Moni Lal*, 20 Cal., 749., *Devidas*, 8 Bom., 771., *Minakshi* 8 Mai 373 followed.

Talem Singh v. Bhagwan, 12 C. W. N. 311.

———**Sec. 622—Order refusing to return plaint—Interference in revision.** Where the plaintiff filed his suit in the District Court of Hyderabad, and the defendant objected to the jurisdiction of the Court on the ground that the suit should have been filed in the Court of the lowest grade having concurrent jurisdiction, viz., the Court of the First Class Subordinate Judge, and on the objection being disallowed, the defendant filed this application in revision, *held* that the application was incompetent. If the order of the Lower Court refusing to return the plaint, was an interlocutory order, no revision application could lie; if on the other hand it be treated as a decision on an issue the proper remedy is by appeal from the final decision.

Pratt & Hayward J. C.

Dero H. H. Mir Hussein Ali Khan v. H. H. Mir Abdul Hussain Khan,
I Sind, L. R. 120.

Contract—Escrow—All vendors not parties—Effect against executors—Material alteration in document after execution—Effect of. Defendants 1 to 5 agreed to sell certain property to plaintiff. A sale-deed was drawn up and signed by defendants 1 and 2 only, and thereafter the transaction having fallen through, the plaintiff forged the signature of the other defendants and instituted the present suit. *Held*, that the sale was of no effect even as against defendants 1 and 2. It was nothing more than an escrow, and could take effect only after all the vendors had signed it. *Held* further, that the document having been materially altered by the addition of the signatures of Defendants 3 to 5, without the consent of defendants 1 and 2, the document became invalid and could not be enforced as against them.

Lucas & Crouch J. C.

Bachi wife of Saleh v. Rasulbux, I Sind L. R. 93.

Contract Act, [S. 30—Wagering Contract containing Arbitration clause—Enforcement of—Act III of 1865—Suit for injunction—Court fees—Several agreements—One injunction sought. *Held*, (1) an arbitration clause contained in the agreement, which purports to be a genuine forward contract, but which really is by way of wager, is void and unenforceable.

(2) It is nevertheless open to the parties to carry it out, and if once an award is passed thereon the grounds on which the Court will set aside an award are quite different from those on which it will grant leave to revoke a submission.

(3) Before an award based on such a submission is passed, the plaintiff has a right to ask for an injunction restraining arbitration proceedings

and the Court must in view of the terms of S. 30, Indian Contract Act, and Act III of 1865, grant relief to the plaintiff, though he be entitled to no sympathy.

Crouch J. C.

Parsootum v. Ranchod, 1 Sind L. R. 173.

———**Ss. 69 and 70**—“*Person interested in the payment of money*”—*Volunteer*—*Civil Procedure Code*, S. 283. The plaintiffs, alleging themselves to be the purchasers of the mortgagees' rights in certain land, paid the amount of a decree against the mortgagee in order to save the property from sale. But it had been already found in a suit under S. 283 of the Code of Civil Procedure that the sale to the plaintiffs was fictitious and inoperative. *Held*, that the plaintiffs were not entitled to recover the amount paid as above described from their vendors.

Knox & Aikman J. J.

Janki Prasad Singh v. Baldeo Prasad, A. W. N., 1908, 58.

———**S. 107**—*Damages*—*Goods unascertained*—*Amendment of Plaint*. Where the Plaintiff had sold 130 tons of “Old Bir” out of two heaps of “Old Bir” which contained more than 130 tons of it. *Held*, that the goods not being ascertained, the property in them had not passed on to the purchaser—Defendants and S. 107 of the Contract Act, had no application. The plaintiff's suit as framed for difference between contract price, and price realised at the resale was not entertainable, but he should be allowed to amend his plaint by claiming difference between the contract price and the market price on the day of the breach on his bearing costs upto date.

Lucas & Hayward J. C.

Shankurdas v. Tyebji, 1 Sind L. R. 81.

———**S. 178**—*Pawnor and pawnee*—*Pawnor not owner but having a right to possession*—*Suit by owner for declaration of his title*. A person who had obtained possession of certain moveable property belonging to a minor in the capacity of a trustee, and who had been allowed to retain possession of such property after the minor came of age, pawned some of it to persons who were found to have acted, negligently perhaps, but honestly and in good faith. *Held* that the pledge was valid, but the owner was entitled to a declaration of his right to redeem the articles so pawned.

Stanley O. J. & Burkitt J.

Sundar Deo v. Bhagwan Das, A. W. N., 1908, 57.

———**S. 196**—*Ratification receiving of*. Ratification in the proper sense of the term as used with reference to the law of Agency, is applicable only to acts done on behalf of the ratifier; and this rule is recognised in

sec. 196 of the Indian Contract Act.

P. O.

Raja Rai v. Debi Dayal, 12 C. W. N. 393.

Co-owners—Right of one of them to build on common ground—Impasse—Injunction. Where one of the co-owners of a common piece of ground which was used as a common yard, erected a shed on a portion thereof. *Held*, that his act amounted to a trespass and that an injunction was rightly granted for its demolition. *Lucas & Crouch J. C.*

Tekchand v. Mussamat Devibai, 1 Sind L. R. 80.

Costs—Right of suit—Costs not allowed in execution department—Costs of objections—Suit not maintainable. Costs incurred by the plaintiff in preferring objections in the execution department, under sec. 278, Civil Procedure Code, can not be recovered by a separate suit, even if the Court states no reason for ordering that the costs should not follow the event. *Aikman J.*

Salig Ram v. Tikaram, 5 A. L. J. 140.

Court Fees, (Act VII of 1870), S. 7 (1) (c)—Suits Valuation Act, §3(1)—Rules under—Rule (c)—Court Fee—Garden—Fruit Garden. *Held*, that for purpose of Court fee and jurisdiction, a fruit garden is a 'garden' even though the garden land is assessed to revenue.

Clark C. J. & Reid J.

Siri Dhar v. Amar Nath, 9 Pun. L. R. 150.

—————**Sec. II—Suit on Tort—Damages for fraud—Assessment of fraud—Assessment of damages in plaint—Larger amount found due—More due.** In a suit for damages based in fraud, it is open to the plaintiff to enter in his plaint an approximate of the damages, paying Court fee there on, and to offer to pay the additional Court fee in case a larger amount is found to be due, before the decree is passed.

Sec. II of the Court Fees Act will not apply to the case, and consequently by the plaintiff cannot be allowed to pay Court fee after the decree is passed and before execution. *Arnold White C J. & Miller J.*

Ragavji Sait v. Anuamalai, 17 M. L. J. 625.

Dekhan Agriculturists Relief Act, Ss. 7 and 12.—Execution of bond admitted—Onus to prove consideration—Duty of the Court to examine parties. Where in a suit against an agriculturist on a bond, the execution of which was admitted, the Plaintiff adduced no evidence, and the Court without examining the parties non-suited the plaintiff on the ground that he had failed to prove consideration. *Held*, that the proce-

dure adopted by the Judge was erroneous. Section 7 of the Dekkhan Act requires the Judge to examine the Defendant, unless for reasons to be recorded in writing he thinks it otherwise, and Section 12 imposes a duty on the Court to examine the parties and enquire into the history and merits of the case. If the parties did not call evidence, it was all the more reason that the Court should examine the parties and arrive at a fair decision of the case.

Lucas & Haywood J. C.

Lalji v. Momedali, 1 Sind L. R. 75.

Estoppel—*Execution of decree—Claim partly decreed—Appeal for dismissed portion not barred by plaintiff seeking execution of the decree passed in his favour.* Held, by the Full Bench that a plaintiff who has obtained a decree for a part of his claim and appealed as regards the part dismissed is not debarred from prosecuting the appeal because he has begun to execute the said decree.—82 P. R. 1868 overruled.

Reid C. J. Johnstone & Rattigan J. J.

Raghu Mal v. Bandu 9 P. L. R. 1.

—————*Acquiescence by father of reversioner—son bound by father's acquiescence—Alienation.* The father of the present plaintiff expressed his willingness at mutation proceedings to take property alienated by a sonless proprietor for the sum paid by the alienee, but took no proceedings against the alienee.

Held, that the plaintiff's father must be deemed to have acquiesced in the alienation, and the plaintiff was thereby debarred from objecting to it.

Lalchand J.

Lakha Singh v. Jotasingh 9 Pun. L. R. 41.

Evidence—Admission—Principal and surety—Admission of the principal debtors. In an action against the surety of the liability must be proved against the surety independently of any admission by the principal debtor which are in law no evidence against the surety. Ex parte Young L. R. 17 Ch. D. 668, referred to.

Aikman J.

Rambhajan Lal v. Sheo Prasad, 3 A. L. J. 142.

Evidence Act, Section 92—Proviso 1.—Sale deed—Oral Evidence—Admissibility of—Mortgage by way of conditional Sale—Agreement reconveying property—registration.—Held: (1) Oral evidence cannot be given to show that a deed purporting to be an out and out sale was by way of mortgage, unless a case is made out as falling under proviso 1, Section 92 of the Evidence Act.

(2) When a collateral agreement purporting to have been executed

by the purchaser was to the effect "I pass this agreement to Ghulam Shah and Ghulam Mahomed so that it should be useful to them when necessity arises, and that if I get money according to the terms of the agreement the sale will be null and void," the property required to be reconveyed being of a value exceeding R. 100, the agreement was inadmissible in evidence for want of registration.

(3) That even if this collateral agreement were admitted in evidence the transaction amounted to a mortgage by way of conditional sale, and on the conditions not having been complied with, the contract executed itself, and became one of absolute sale without any further act of the parties.

Lucas & Crouch J. C.

Ghulam Mahomed v. Hariram 1 Sind L. R. 96.

——— **Secs. 91, 92**— '*Terms of the Contractor*'—*Question as to the parties contracting—Oral evidence—Admissibility—Proof that obligor signed as member of the firm.* The question as to who the contracting parties are is not one relating to the terms of the Contract within the meaning of sec. 91, 92 of the Evidence Act; and oral evidence is admissible to show that a person who signed a deed so not only for himself but also as an agent for others, e. g. as a member of a firm.

White C. J. & Wallis J.

Venkatasubbiah Chetty v. T. Govindrajulu, 17 M. L. J. 1

——— **S 118—Oudh Act, 1173, ss. 2, 6 and 13—Competency to testify but inability to understand oath—Oath or affirmation, evidence recorded without administering—Admissibility of evidence so recorded against the accused.** Held, that where a person is competent to testify according to the provisions of s. 118 of the Evidence Act but is unable, owing to his tender age, to comprehend the nature of an oath or affirmation, s. 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. 14 Ben. L. R. 54, 295, 294., 16 Bom. 395 followed. 10 All. 207, 11 All. 183, 16 Mad 105, 8 O. C. 21, disapproved.

Sanders & Greevan J. C.

Ram Saunjah v. Emp. 10 O. C. 337.

Execution proceedings—Striking of petition—No disposal—C. P. Code, S. 223—Limitation Act, Art. 179. Where a judgment-debtor resides outside the jurisdiction of a Court to which an application for execution is made, the Court is competent to make an order for transmission of the decree without an application for the purpose,

Held, that striking off of an execution petition on the failure of the party failing to apply for an order for transmission to the Court within the time allowed by the Court for the purpose, is not a proper disposal of the petition and that the petition should be treated as pending.

Wallis J.

Pauchagnula v. Polipulli, 17 M. L. J. 616.

———*Award relating to property outside jurisdiction—Duty of Executing Court.* *Held*, (1) A Court is not wholly without jurisdiction to entertain an application to file an award, merely because the property affected by the award is not within its jurisdiction.

(2) If such a question is raised before an award is filed, the Court filing the award has jurisdiction to adjudicate on it.

(3) But where no such question has been raised in the proceedings to file the award, the Court executing the decree cannot go into it and must carry out the orders of the decree into effect as conclusive between the parties, whether it may or may not be disputable in point of law.

Held further, that if the Court passing the decree took proceedings wholly without jurisdiction the parties would remain unaffected by such proceedings.

Lucas & Crouch J. C.

Baloomal v. Hasraj Isardas, 1 Sind L. R. 93.

Fishery—*Independent julkar—Navigable river—Survey map—Map for private purposes—Comparative value.* Unless a person can establish his right to a fishery independent of his right to his estate, he can have no title to any such right in a navigable river or any part thereof lying outside the boundaries of his estate.

What evidence is necessary to prove the grant of an independent right of fishery in a navigable river discussed. Upon the documentary evidence it was held that the lower appellate Court was in error in finding that plaintiff had proved an independent julkar.

The presumption of law is that in the absence of evidence to the contrary, survey maps prepared for public purposes by responsible officers of Government are entitled to more reliance than prepared for private purposes in a private suit.

Brett & Sharfuddin J. J.

Mathura Nath v. Sil Chandra 12 C. W. N. 334.

Guardian and minor—*Guardian ad litem—Civil Procedure Code, s. 447—Necessity of formal discharge from the duties of guardian ad litem—Suit to set aside a decree.*—*Held* that no suit will lie to set aside a decree

where fraud is neither alleged nor proved and no specific relief is asked for and except the setting aside of the decree.

Held also that where the same person is both certificated guardian and guardian *ad litem* to minor plaintiffs, the fact that one of such plaintiffs has come of age and been appointed certificated guardian of the persons and property of the others would not relieve the original guardian of her duties as guardian *ad litem*: to do this requires a special order under section 447 of the Code of Civil Procedure.

Stanley C. J.

Banarsi Prasad v. Ram Narain, A. W. N., 1908, 23.

Guardian and Wards Act—Rival claimants for guardianship—Arbitration—Power to refer dispute to arbitration—Code of Civil Procedure, sec. 647 Rival claimants, to be, appointed as guardian of a minor, are not in the position of ordinary litigants and cannot refer the matter in dispute to arbitration. The guiding principle, in appointing guardian, is the consideration what is best for the welfare of a minor.

Per Karamat Husain J. Sec. 647 of the Code of Civil Procedure deals with procedure and procedure alone and does not touch the substantive law of arbitration. The consent of parties, in a proceeding for appointment of guardian, does not give any power to refer the matter to arbitration.

Aikman & Karamat Husain J. J.

Makadeo Prasad v. Bindeshri Prasad, 5 All., L. J. 101 = A. W. N., 1908, 51.

—————**Section 38—Inquiry before removing a duly appointed Guardian.** After the appellant had been appointed Guardian of the property of a minor, under Act VIII of 1890, the opponent applied for his removal on the ground that he was a fit person. At the hearing, and after the Appellant's statement alone had been recorded, the parties agreed to accept the Deputy Commissioner as Guardian. He, however, refused to act as such, and the Court appointed the Nazir as Guardian without holding any further inquiry as to the unfitness of the appointed Guardian. *Held*, that the order appointing the Nazir was *ultra vires*; the Court was bound to make an enquiry under section 39 of the Guardian and Wards Act before appointing a new guardian in place of a duly appointed guardian.

Lucas & Crouch J. C.

Aiskimal v. Hijalbai, 1 Sind L. R 92.

Hindu Law—Deputter—Hereditary shebaitship—shebaitship, validity of disposal by Will—Usage—Family custom.—*Held* by Maclean C. J. and Mitra, J.—In the absence of any local usage or family custom and where

no case of necessity or clear benefit to the idol has been made out, a shebait of a private debutter is not entitled to dispose of his office of hereditary shebaitship by his Will.

Held by *Woodroffe J.*—That the question of usage did not effect the matter and the office of shebaitship could not be alienated by Will.

Rajeshwar v. Gopeshwar 12 C. W. N. 313.

—**Debt—Father's debts—sons liability—Breach of Civil duty—Breach of contract—Misappropriation**—A Hindu father entered into a *kuri* transaction, and received a certain sum of money in consideration of his undertaking to manage the fund to make collections and dispose of them among other members. The transaction was entered into for the benefit of the family. The father made the collections but did not make the payments as he was bound to. Held, that the default in making the payments constituted a breach of a Civil duty as distinguished from criminal misappropriation and so the family property was liable in respect of the contract.

White C. J. & Benson. J.

Kanemar v. Krishnacharya, 17 M. L. J. 613.

———**Son, right of, to challenge a ready money debt contracted by the father—Antecedent debt, meaning of—Grounds for challenging a debt contracted by a Hindu father**—Held, that where family property is mortgaged by a Hindu father to secure repayment of an advance made at the time of the mortgage his son cannot challenge the mortgage on the ground that there was not an antecedent debt. In order to challenge such a transaction he must show that either the debt was not contracted at all or is no longer in existence or is tainted with immorality. *Sanders & Griffins J. C.*

Jangi Singh v. Chaudhri Ganga Singh, 10 O. C. 360

———**Joint family—Property acquired by joint exertion of father and sons living—joint character of the property—Nucleus of property—joint property—self acquired property.**—Where a father and his sons acquire their property by their joint labours and are besides joint in food and worship, they must be regarded as having constituted a joint Hindu family even though there may have been no nucleus of property which has come down to the father from his father or grand-father or great grand-father. For the formation of a coparcenary in Hindu law such a nucleus is not absolutely necessary, provided the persons constituting it stand in the relation of father and son or other relation requisite for a coparcenary system and those persons by living, messing and worshipping together, and throwing all the property acquired jointly into one common stock manifest their in-

tion to deal with one another and without siders as members of a co-parcenary system under the Hindu law.

It is open to a co-parcener to alienate the whole property with the consent of other coparceners, but he can not alienate it so as to prejudice the rights of other members of the family.

Where certain property has acquired the character of joint property under Hindu law, it has imposed on it by that law as a consequence of that character certain obligations which cannot be got rid of by the co-parceners to the prejudice of the parties in whose favour those obligations are created by the law by a mere agreement to treat it as the self-acquired property of one of those co-parceners.

Chandurwarakar & Knight J J.

Laldas Nurandas v. Motibai 10 Bom. L. R. 175.

———**Succession—Person excluded from succession by incurable disease.** Although a Hindu who is suffering from an incurable disease may be unable to inherit, if he succeeds to an estate before contracting such disease he will not thereby be divested of such estate.

Aikman & K. Husain J. J.

Murli Singh v. Jai Singh, A. W. N., 1908 47 = 5 A. L. J. 115.

———**Exclusion from inheritance—Disqualification of husband as murderer—Wife not affected by disqualification—Construction of texts.** The wife or widow of disqualified Hindu does not become incapable of inheriting property merely by reason of her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude a person from inheritance under the Hindu Law.

It is a canon of interpretation in Hindu law that a special text forming an exception to a general text should be construed strictly and apply only to the cases falling clearly within it. *Chundurwarakar & Knight J. J.*

Gangu v. Chandra Bhagabai, 10 Bom. L. R. 149.

———**Will—Construction—Life estate and widow's estate—Distinction between—Sale by limited owner—Sale when set aside—T. P. Act s. 51.** Held, that a will containing the following bequest, to the testator's mother.—“The aforesaid properties should go to you for your maintenance and you shall accordingly enjoy the same all your life with right to sell or gift away”, conferred on the mother only a life estate and not a widow's estate, and that an alienation by the mother or persons under her, of the properties, cannot confer any interest on the alienees beyond her life-time.

even though the alienation be for a purpose binding on the estate of the testator i. e. for discharging a mortgage created by the testator on the very properties.

A Hindu testator gave certain properties to his mother for maintenance with powers of alienation. The property was subject to a mortgage created by the testator.

The mother gifted away the properties to her nephew. The mortgagee obtained a mortgage-decree against the widow of the testator, the mother, and her nephew, and in order to satisfy the decree debt, the nephew sold away, by a private sale, the properties to third persons and discharged the decree debt. The widow was not proved to have been a consenting party to the sale.

Held—That neither the mother nor her donee the nephew, was competent to convey any thing more than the life interest of the mother in the properties, and that the widow was entitled to recover the properties on her paying the amount of the mortgage decree debt and the value of the improvements, if any effected by the alienor in good faith, of the properties.

White C. J. & Miller J.

Nanjamun v. Nacharam, 17 M. L. J. 629.

———**Joint Hindu family—Liability of sons for fathers debts—**
Defence that debts were incurred for immoral purposes—Burden of proof—
According to the Hindu law of the Mitakshara school it is not necessary in order to establish a son's liability for his father's debt that it should be shown that the debt was contracted for the benefit of the family. It is sufficient, in order to establish the liability of sons to pay a personal debt of their father, if the debt be proved, and the sons cannot show that it was contracted for immoral purposes or was such a debt as does not fall within the pious duty of the sons to discharge *Maharaj Singh v. Balwant Singh*, 28 All. 508; distinguished. *Kishan Lal v. Garuruddhwaja Prasad Singh*, 21 All. 16; followed.

Where, in such a case as above, the sons set up the defence that the debt was incurred for immoral purposes, the burden of proof is on them and not on the creditor. *Dibi Dat v. Jadu Rai* 24 All 453; followed. *Jamna v. Nain Sukh* 9 All. 493 dissented from.

And merely general evidence of profligacy on the part of the father is not sufficient. *Chintamanrav v. Mahendale Kashinath*; 14 Bom., 320; referred to.

Bannerji & Richards J. J.

Babu Singh v. Biharilal, A. W. N., 1908, 61. = 5 A. L. J. 115.

———**Joint property**—*Joint family-property—Joint ancestral family property—Distinctions between—Nucleus, how far a necessary ingredient.*—The three notions (1) Joint property, (2) Joint family property and (3) joint ancestral family—Property are distinguishable. In all three things there is a common subject, property; but it is qualified in three different ways. The joint property of the English law, is property held by any two or more persons jointly, and its characteristic is survivorship. Analogies drawn from it to joint-family property are false or likely to be false for several reasons. The essential qualification of the second class is not jointness only but a good deal more. Two complete strangers may be joint tenants according to English law: but in no conceivable circumstances could they constitute a joint Hindu family, or, in that capacity, hold property. In the third case, property is qualified in a two-fold manner: it must have been joint family property and it must be ancestral.

It is obvious that there must have been a nucleus of joint family property before ancestral joint-family: property can come into existence because the word ancestral connotes descent and therefore of course, pre-existence. But because it is true that there can be no joint ancestral family property without a previous nucleus of joint-family property it is not true that there can not be joint-family property without a pre-existing nucleus, for that would be identifying joint-family, with ancestral joint-family property.

Where there is ancestral joint family property, every member of the family acquires by birth an interest in it, which cannot be defeated by individual alienation or disposition of any kind. This is equally true of joint family property.

Where it is known or admitted that some at least of the property of a joint family has come down to them the presumption is that the whole property is ancestral, and any member alleging that it is not, will have to prove his self-acquisition.

Where property is admitted or proved to have been joint-family property it is subject to exactly the same legal incidents in every respect, as property which is admitted or proved to be ancestral joint family property. Further, this class of property in India differs radically in origin and essential characteristics from the joint-family property of the English law. The fundamental principle of the Hindu joint-family is the tie of sapindaship. Without it, it is impossible to form a joint-Hindu family. With it as long as a family is living together, it is almost impossible not to form a joint-Hindu family, and is of its very essence.

There is nothing either in practice or theory which excludes the possibi-

lity of members of the same family, starting a family fortune holding it as members of a joint-family and thereby clothing it with all the legal qualities, and incidents of joint-family property, chief among which is that every member born into the family after the property has acquired that character, and before it has been divested of it by portion, obtains by birth an interest in it.

Beaman J.

Karsandas Dharamsey v. Gangabai 10 Bom. L R 189.

——— *Widow-Alienation-Consideration in part, binding on reversioners—sent by reversioners to set aside—Pleadings—consents—decree, frame of—* A Hindu widow is not bound to mortgage any portion of her husband's estate, if that be more prejudicial to her than a sale by reducing her income to a greater extent as she does withold the property for the benefit of the reversioner nor is she bound to raise money on her personal security.

The right of a reversioner to set aside a sale deed executed by a Hindu widow which is in part for a consideration binding upon the reversioner, depends upon his refund of at least so much of the consideration as is binding upon the reversion; and in a suit to set aside the sale, the reversioner should offer to reimburse the bonafide purchasers of so much of the money as has been legitimately advanced. *Mutteeram v. Gopaul*, 1873, 11 B. L. R. 416; followed.

Courts could not in the lifetime of the widow decree that upon her death the deeds of property should be set aside upon payment, by the persons who should succeed to the estate, of the amount which the widow was entitled to raise inasmuch as it would be contingent upon the will of persons who might succeed, to the inheritance whether they would pay the amount or not, and the purchaser could not properly be placed by a decree of the court in a state of uncertainty as to whether or not he could safely expend capital in the improvement of the estate. Such a decree would be unjust to the purchaser and it would be contrary to public policy to place an estate in that position in which it could not be known whether an estate could be safely improved or not. *Gobind v. Baldeo*, 26 A. 330 dissented from

Boddam & Sankaran Nair J. J.

Singan Setti Dranpur Payamma, 17 M. L. J. 2.

——— *Burden of proof—Purchaser from a Hindu woman—duty of.* One who claims title under a conveyance from a Hindu woman with the usual limited interest which a Hindu woman takes, and who seeks to enforce that title against reversioner is always subject to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making and

also that that that alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity, and this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner.

P. C.

Raja Rai v. Debi Dayal 12 C. W. N. 393.

Insolvency Act, (St. 11 and 12 Vic, c. 40), s. 7—Insolvency—Vesting order—Official assignee—Withdrawal of the petition for insolvency—Right of Official Assignee to maintain a suit. On the 14th October 1903, a petition in insolvency was filed and a vesting order was made by the Court. On the 15th June 1904, the insolvents took out a rule nisi to withdraw their petition; and the rule was made absolute on the 21st September 1904. But the rules were not drawn up till 27th February, 1906. In the meanwhile, the Official Assignee filed a suit on the 2nd March 1905, on behalf of the insolvents to recover a sum of money alleged to be due to the insolvent's firm in respect of certain mercantile transactions. It was objected that the Official Assignee was not entitled to maintain the suit.

Held, that at the date of the institution of the suit the insolvency proceedings were still in force, and the assets of the insolvents still remained vested in the Official Assignee. The subsequent coming into force of the order could not vitiate the institution of the suit, and it was that the Official Assignee was competent to bring the suit. He was also competent to continue it for the order of withdrawal even after it became operative, was not effective to divest the Official Assignee and re-vest the property in the insolvents.

The withdrawal of a petition for insolvency does not operate to discharge the vesting order. A withdrawal for which no provisions is made in the Act cannot be regarded as the legal equivalent of a dismissal by consent.

Jenkins C. J. & Batchelor J.

Haji v N. C. Macleod 10 Bom. L. R. 178.

Interest—Penal rate—Fair interest to be allowed.—Held, that having regard to the ordinary bazaar rates for loans on personal security, 24 p. c. interest per annum should be allowed in cases where the bond sued on provides for exorbitant interest.

Lucas v. Crouch, J. C.

Keomal v. Mooso Haji, 1. Sind L. R. 113.

Kathiawar—C P. Code, Ss. 588 Cl (24), and 493—Appeal against refusal to grant temporary injunction—A miscellaneous appeal is allowed

under Sec. 588 Cl (24) against an order refusing a temporary injunction, just as much as against one granting it, as the words "or refuse the same" in Sec. 493. C. P. C. imply the order of refusal being appealable.

Parekh Harilal Bai Majiba, 17 K. L. R. 290.

———**Sec. 622—Powers of revision—Waiver of jurisdiction—Power of District Judge Jurisdiction to grant heirship Certificate**—A certificate of heirship having been ordered to be granted by a subordinate Court of the Administrator of a native state, on condition that the opposite party did not file a regular suit within 3 months, the suitor applied for revision, contending that such an order ought to be passed. The opposite party, who had applied elsewhere, pointed out, without making an application for revision, that the Court making the order had no such jurisdiction under the powers allotted by the Government. Held that the fact that the opponents had made no application for revision and appeared to have filed an appeal elsewhere, made no difference, as there could be no waiver regarding jurisdiction; and that the agent's Court being a High Court and having the records and the parties before it, was bound to hold the proceedings null void under sec. 622 C. P. C., Held also that the court of the Administrator would, as being the Court of the District Judge be the proper forum to adjudicate—upon the grant of such a certificate.

Bai Monghi v. Sunderji Raichand 17 K. L. R. 276.

———**Court fee—On set off—Civil Procedure (act XIV of 1882) Sec. III, 216—G. R. No. 7967 of 3-12-88 superseded by Government.**—The fee payable on a set-off is now not that paid on the excess, but that paid on the defendant's whole claim (XVII K. L. R. 1906, subsequently—confirmed by Government.)

Nautamlal v. Gandhi Panachand 17 K. L. R. 259.

———**Evidence Act S. 116—Estoppel of tenant—Title enquired into in special circumstances—Succession among Muhomedun dervish of a monastery.**—In a suit for rent alleged to be due under a rent note passed to the plaintiff as heir and successor to the estate of a deceased person, the defendant having replied that he had occupied the house for 12 years under an agreement with the real successor, and that the rent note was passed at the request of that successor to the plaintiff in the name of the estate of the deceased and also that rent had already been paid to the third person, held that, though the ordinary issue that would arise in such a rent suit, was simply whether the relation of landlord and tenant was established between the parties, yet the question of title (that is the ques-

tion of heirship and succession) must be decided under the special circumstances of the case.

Haji Mustakali v. Memon 17 K. L. R. 292.

—**Pleader's fees**—A decree-holder having failed in a summary claim brought by an alleged mortgagee of his judgement-debtor to raise attachment filed regular suit under sec. 213, C. P. C. claiming that the mortgage was inoperative and that the attachment should be restored. The suit being decided in his favour and costs thrown on the mortgagee the question arose (upon the decree-holder's application) whether pleader's fees should be assessed on the decretal amount for which attachment was sought, or on the amount corresponding to the fixed fee of Rs. 10-0-0.

Held, that pleader's fee should be calculated on the actual value of the property in litigation and not on the amount of the claim as estimated for paying Court fees.

Manager of the Estate of Vala Giga Hira v. Mistri Jivan Vasta,
17 K. L. R. 278.

—**Regulation (VIII of 1827)**.—*Hindu widow left in enjoyment of her father-in-law's property by acquiescence or by permission of his daughters for over 20 years—Successors of such widow—Adverse possession, and permission possession—Civil Procedure (Act XIV of 1882), sec. 647—Review of order granting heirship of certificate.* A father having died, the widow of his predeceased son was allowed to live in enjoyment for over 20 years, and after her death, surviving daughter, and also a son of a deceased daughter of the father applied for a certificate of heirship. *Held*, that really the widow could not be the heir, though she was allowed to remain in enjoyment of her deceased father-in-law's property; that she being a trespasser, the succession opened on his death and not on hers; and that, as at the date there were alive other daughters also, the property vested in them severally and so the two applicants were entitled to several half shares of the father's property (IV Bom 219, IX Bom. p p 31, 34) and that each should have been ordered to pay half the fees required for issue of the certificate but that, as her possession lasted for over 20 years, and as her possession must be presumed to be on her own behalf unless it were proved to be on some one else's what was first a trespass ripened into ownership; that supposing she had a life estate or that she took as an absolute owner (free from the ordinary presumption attaching to her actual relationship), the father's surviving daughter could be the sole heir, and that by the apparently

bona fide acquiescence of the father in the widow's possession, the right of the deceased daughter's son would be extinguished.

Rajgor Popallal v. Bai Sankli Rajaram, 17 K. L. R. 261,

—**Religious Trust**—*Appointment of successor to sir-fakir*. The appointment of a successor to a sir-fakir (head dervish) in takia (convent), may be made by the sir-fakir himself subject to the confirmation of the ruling power, and where he dies without nominating a successor, it is competent to the ruling power of the judicial authority to appoint a new one who would usually be selected for superiority of qualifications combined with seniority and generally but not necessarily in the same family.

Hazi Mustakabi v. Memon Daud Latif, 17 K. L. R. 292.

—————*Review of an order granting heirship certificate*—*Whether lies*. An application for review of an order granting as heirship certificate lies under sec. 647 C. P. Code.

17 K. L. R. 261.

Lambardar and co-sharer—*Powers of lambardar to deal with coparcenary lands*—*Lease for seven years*.—In the absence of a custom to the contrary a lambardar has no power, without the consent of the co-sharers, to grant a lease of coparcenary land beyond such term as the circumstances of the particular year or season may require. *Chattray v. Nawala* (Weekly Notes, 1906, p. 257) followed. *Mukhta Prasad v. Kamta Singh* (Weekly Notes, 1906, p. 277) distinguished.

Stanley C. J. & Burkitt J.

TikamSingh v. Khubiram, A. W. N., 1908, 56.=5 A. L. J. 173.

Land Acquisition Act (1 of 1894), sec. 31—*Land acquisition Compensation*—*Mortgage*—*Right of mortgage*.—The mortgagee of property, a portion of which is acquired by Government, is entitled to the whole of compensation allowed by Government, when the mortgage money exceeds the sum awarded as compensation.

Reid J.

Topans Das v. The Secretary of state for India in Council 9 P.L.R. 3.

—————**S. 49**—“*House, manufactory or building*”—*Acquisition of part only required*—*Whether whole must be purchased*.—Land which is not a house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the “house, manufactory or building” within the meaning of section 49 of Act No. I of 1894. Whether or not the land is so reasonably required is a question

time of fact depending upon the particular circumstances of each case.
Mairati Lal v. The Secretary of State for India in Council 11 All. 378 distinguished.
Bannerji & Richards J. J.

Nitaram v. The Secretary of State for India in Council, A. W. N. 1908, 63, = 5. A. L. J. 166.

—————*Trees—Land-holder's and tenant's rights as to trees on tenant's holding.*—Held that as a general rule the property in timber growing on a tenant's holding vests in the zamindar, and the tenant has no right to cut and remove such timber. But as a general rule also the zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so long as the relation of landlord and tenant subsists.
Stanlly C. J. & Burkitt J.

Ganga Dei v. Badam, A. W. N. 1908, 51 = 5 A. L. J. 99.

Legal Practitioner's Act (XVIII of 1879), Sec. 13—Compromise by client.—A legal practitioner, who believing himself to be under a pecuniary liability to his client, endeavours to get the client to accept a less amount than that for which he is liable is not guilty of "grossly improper conduct in the discharge of his professional duty" within the meaning of sec. 13 of the Legal Practitioner, Act.

Stanley C. J. Bannerji & Aikman J. J.

In the matter of *Ahsan Ali* 5 A. L. J. 126.

—————**Secs. 13 and 14—Pleader—Unprofessional conduct Refusal of brief for political reasons—Right to refuse—Reasons for refusal if must be stated—Right to move High Court to quash proceedings when called upon to show cause.**—A pleader is not bound to accept a brief offered to him, nor to state his reasons for refusing to accept it. A pleader having refused a brief offered to him was subjected to stringent examination to disclose his reasons and on its appearing that his reasons were political, proceedings were started—against him under the Legal Practitioners' Act and he was called upon to show cause why he should not be reported to the High Court for unprofessional conduct. Without waiting to show cause the pleader at once moved the High Court to quash the proceedings.

Held—That he was entitled to do so. That there was no rule of procedure to justify the examination to which he was subjected.

Maclean C. J. & Cox. J.

(In the matter of) *Nabin Chandra Das* 12 C. W. N 781.

Lessor and lessee—Registered lease—Condition for payment in ad-

vance—Validity of payments in advance as against an auction purchaser. Bonafide payment of rent in advance by lessees to the lessor under the condition of a registered lease before sale of the property is binding upon the purchaser as the lease being a registered one it is his duty to make enquiries whether any payment was made under its terms.

Stanley C. J. & Burkitt J.

Nand Kishore v. Anwar Husain 5 A. L. J. 91.

Light & air—45 degree rule—disturbing the prevailing wind—The plaintiff alleged that he had sold a piece of land to the defendant on condition that the defendant will raise a party wall neither more nor less than 14 feet in height, but either through fraud or mistake, in the document executed for the purpose, it was written that the wall was not to be less than 14 feet, but it may be more. The defendant had raised a wall 38 feet high and by the side of the wall had erected privies and out-houses which were a nuisance, and thereby interfered with plaintiff's right of easement of light and air. *Held*, that the plaintiff was entitled to rectification of the document and an injunction ordering the defendant to pull down the party wall.

As for easement of light, the plaintiff's main building being 38 feet from the out-houses and being only 38 feet in height, by the rule of 45 degrees, there was no infringement of the easement of light.

A person can not acquire by prescription a right to the uninterrupted flow of the prevailing wind without obstruction to his premises.

Lucas & Knight J. C.

Badroodin vs. Anthoney E. Almeida 1 Sind L. R. 32

Limitation Act, Section 12—Exclusion of time between Judgment and signing of decree.—*Application for copies filed late.*—*Application for leave to appeal in forma pauperis.*—*Court fees paid subsequently.*—Where a decree is not prepared and signed for several days after passing of the judgment, the Appellant is not entitled to exclude the period of such delay, unless he has put in an application for a copy of the judgment and decree. If he applies for a copy, but the copy cannot be prepared, because the decree is not signed he will under Section 12 of the Limitation Act, be entitled to exclude the number of days, which elapse between the date of his application and the date on which the copy is prepared.

Where an application for leave to appeal in *forma pauperis* has been presented within the proper time and is still under enquiry, and

the applicant pays Court fees as on a regular appeal, the regular appeal must be considered to have been presented on the date on which the application was presented. But this principle will not apply, if the application for leave to appeal in *forma pauperis* had been presented after the period of limitation.

Lucas & Crouch J- C.

Lakhiomal vs. Joomromal, Sind L. R. 71.

———**Sec. 14, Art 14', 144—Action in ejectment, previous—**
Issue between Defendants—Original and appellate judgment—Period intervening—Right of action in suspense. C's heirs brought a suit for possession against the respective heirs of B and M, claiming a certain share in a certain property in the possession of the heir of B. In the judgment in the action pronounced on the 20th April 1903 upon an issue raised by the Defendants the heirs of B, as between themselves and their co-Defendants heirs of M, it was declared that the latter were entitled to a share in the property. The Appellate Court set aside on the 22nd February 1904, the judgment of the Lower Court so far as it affected M's heirs, on the ground that in a suit in ejectment no decree could be made against a co Defendant; M's heirs, then, on the 14th November 1904, instituted this suit for a declaration of their share in the property, for possession, partition and other reliefs, stating that the had been dispossessed on the 18th January 1892. The Lower Court dismissed the suit, holding it to be barred by limitation.

Held, on appeal—The plaintiffs were entitled to deduction of the period between the 20th April 1903 when in the previous suit they obtained a decree in their favour and the 22nd February 1904, the date of the reversal of that decree by Appellate Court, their right of action having been in suspense in the interval. *Mussamat Rane v. So-shee*, 12 M I. A. 244 (1868). *Prem Nath v. Rookea*, 7 M. I. A. 357 (1859) referred to.

———**Art 10—Limitation—Pre-emption suit—Property in suit in possession of tenant—Property capable of physical possession** *Held*, that property in the possession of tenants cannot be said to be capable of physical possession within the meaning of article 10 of second schedule of the Limitation Act. P. R. 88 of 1905 s. c. 179 P.L.R. of 1905 explained. I. L. R., XXIV All. 18 (P. C.) 16 P. R., 1885, 48 P. R. 1884 followed.

(F. B.)

Ghulam Mustafa v. Shahabuddin Khan, 9 P. L. R. 156.

———**Arts. 44 and 144—Joint Hindu family, guardian of a member belonging to—Transfer by mother purporting to act as guar-**

dian—Suit for possession brought by a minor to recover property alienated without necessity, limitation for—Held, that in a joint Hindu family the mother of a minor cannot be considered to be the legal guardian of the minor.

Held further that where a member of a joint Hindu family brings a suit for recovery of possession of the property alienated during his minority by his mother professing to act as his guardian, within twelve years from the date of transfer, but more than three years from the date of attaining majority, the suit is not barred under art. 44, sch. ii, of the Limitation Act but is governed by art. 144,

Gharib ulla v Khaluk Singh, 25 All 407 followed. Matadin v. Ali Mirza 5 O. C. 197 approved. to. Sanders & Greevan J. C.

Satrohan Singh v Raju Indar Bikram Singh 10 O C. 367.

—————**Art. 91—Parties not in Pari Delicto—Restoration of Property—Per Lucas and Crouch, J. J.**—When a document is held to be champertous, it is void under Section 23 of the Indian Contract Act, as being opposed to public policy, and not merely voidable on the grounds of fraud or undue influence.

A suit to recover property given in pursuance of such agreement is not governed by Article 91 of the Limitation Act, but by the 12 years rule.

Lucas & Crouch J. C.

Vishindas vs. Daim and Another 1 Sind L. R. 21

—————**Article 179, clause 2—Execution of decree—joint decree—appeal against some of the judgment-debtors in respect of the dismissed portion of claim—starting of limitation period against other judgment debtors.**—In a suit for possession by partition a decree was passed by which plaintiffs were awarded about a fourth share in property Nos. 1, 2, 3 and 7, and a certain share in property No. 2 against defendants No. 1, 2, 3, 4 & 5, The decree against defendant No. 4 was *exparte*. When the present application for execution was made it was contended by defendant No. 4 that, so far, as he was concerned, the execution was barred—under sec. 230 of the Civil P. Code & Article 179, of the second schedule of the Limitation Act, the limitation running against him from the date of the passing of the decree. For the decree-holder it was contended that as the decree was disputed by the other defendants and final decree in the case was not passed by the Chief Court more than three years previous to the application for execution, the execution was not barred, as limitation ran in case of an appeal against a decree from the date of the final decree of the appellate Court,

Held, that the execution was not barred, for there was a single decree passed in favour of the plaintiff and not two, though all the defendants were not interested in both the parties in respect of which the decree was passed; a decree as was passed in this case being in the nature of a joint decree could not be split into two portions, and an appeal having been filed against the decree, the date of the final decree gave the starting point of limitation.

Chatterjee J.

Ammar Ali v. Inayat Ali 9 P. L. R. 21.

———**Art. 179 (cl. 4)—Step in aid of execution—Application ad in accordance with law.** An application for execution though not in accordance with law, may help to save limitation if it contains a prayer for the issue of a notice under s. 248 C. P. C. in a case in which a notice is necessary in order to enable execution to proceed.

Miller & Munro J. J.

Kamakshi v. Ramasamy, 17 M. L. J. 15.

The Madras Municipalities Act, 1884, sec. 179—External roofs. "The external roofs, verandahs, pandals and walls of buildings erected or renewed after the coming into operation of this Act, shall not be made of gross, leaves mats or other such inflammable materials except with the permission of the Municipal Council." (Sec. 179 Madras District Municipalities Act, (1884).

Held, that it is erroneous to say that sec. 179 of the Act operates only when the roofs, &c., are constructed outside the house i. e. externally.

Subrahmunia Aiyar J.

The Public Prosecutor v. Narayana Naidu 2 M. L. T. 429.

Mahomedan Law—Shias—Will—Power of devise amongst Shias.—Amongst Mohommadans of the Shia sect a testator can leave a legacy to one of his heirs so long as that legacy does not exceed one-third of his estate, and such a legacy will be valid without the consent of the other heirs. Where, however, the legacy exceeds one third of the estate it will not be valid to any extent unless the consent of the heirs, given after and not before the death of the testator has been obtained.

Stanlly C. J. & Burkitt J.

Fahmida Khanum v. Jafri Khanum, A. W.N., 1908, 55=5 A.L.J. 169.

———**Co-sharers—Partial partition—suit for—Limitation Act Art. 144—Mortgage by sons—Adverse possession—Presumption—Pardanishin Lady.**—*Held*, that "the Court will not presume and will refuse

to believe without clear proof, that when the sons of a Mohomadan Pardanishin lady lease or mortgage family lands, they do so adversely to her, that is in fraud of her rights or with the intention to defeat them. The natural presumption is that they deal with lands as Managers or Agents for her as well as for themselves." Where, however, there is an out and out sale, limitation begins to run as against her rights from the date of such sale and a suit brought more than 12 years after such date, for partition and possession of her share therein, is barred under Art 144 of the Limitation Act.

Held further, that the position of a Mahomedan co sharer suing for partition is in no way different from that of a Hindu co parcener and a suit filed by him for partition and possession of his share only in such part of the family property as has been alienated by another co-sharer is not maintainable.

Lucas & Crouch J. C.

Dhumoonal v. Mussamat Kaim Khatu. 1 Sind L. R. 133.

Malbar law—Marumak Kathayam law—Gift by Mahomedan husband a wife and Children governed by Marumakathayam law—Estate taken.—Held, that in the case of a gift to a woman & her children governed by the Marumak—Kathayam law, by her husband, a Mahomedan, the donees take the property with the incidents of Tarwad property.

White C. J. & Wallis J.

Pattatherunath v. Mannam 18 M. L. J. 16

Malabar tarwad—Decree against karnavan as representing tarwad Division of tarwad into taveris, subsequent to decree and prior to execution proceedings—Members not represented by Karnavan of the original tarwad, not bound by proceedings in execution—The members of a tarwad cannot escape liability for debts on decrees binding on the tarwad by dividing into taveris Second Appeal No. 1323 of 1894, Madras and *Kunhappa v. Shridevi* (1 L. R. 18 Mad 451) followed.

But when the karnavan of the original tarwad has ceased to represent them they cannot be bound by proceedings in execution of a decree against him unless they are separately represented. *Shunkar v. Kedu* (1 L. R. 2 Mad. 29 Referred to.

Benson & Wallis J. J.

Komiyaprath v. Mannayatha 3 M. L. T. 189.

Mesneprofits—Practice as to—When the defendant held possession of properties under deed of sale from a limited owner, which were found to have been executed without legal necessity, the Plaintiff's claim for mesne profits was allowed.

P. C.

Raja Rai v. Debi Dayal 12 C. W. N. 393,

Mortgage, Transfer of Property Act, s. 82—requisites of
—Mortgages seeking possession—Redemption. In a mortgage deed after enumerating several contingencies provision was made on the happening of any of them in the following terms.—“Notwithstanding anything contained to the contrary the mortgage debt for the time being owing on the security of these presents shall at once become payable as if the due date or extended date if any, had elapsed, and in such case all such rights and remedies shall be available to the Banker as will be available to her under the provisions of these presents upon default being in payment of the principal moneys or interest and all other moneys hereby secured and the Bank may in such event in her discretion without any further consent on the part of the Company forthwith enter upon or take possession of the mortgaged premises or any of them of which she is not already in possession.

Owing to the happening of some other contingencies the plaintiff claimed that the debt owing on the security of the mortgage deed had become payable and that she was entitled to enter upon and take possession of the premises mortgaged to her. She contended that the expression “as if the due date had elapsed not only served to accelerate the due date, but also to fix the amount of the mortgage money at what it would have been if in fact the due date had elapsed. The defendant alleged a tender of the mortgage money to plaintiff's attorneys and refusal to accept the same, and claimed to redeem the property.

Held (1) that the words ‘as if due date had elapsed’ were used merely to accelerate payment and they could not be constructed to cover the further amount that would have been due on the expiry of the due date of the mortgage.

(2) That the tender was not good, as the plaintiff's attorney disclaimed authority to receive it.

(3) That the defendant was entitled to redeem the property.

A tender must be made either to the principal whose business it is to consider it or to his authorised agent, and a tender made to a person who disclaims authority to receive it is made at the maker's risk. *Watson v. Hatherington*, (1883) 1 C. & K. 36, & *Bingham v. Allport*, (1883) N & M 398 referred to. *Jenkins C. J & Batchelor J.*

Bai Ruttonbai v. The Fraser Ice Factory Ltd. 10 Bom. L. R. 203.

—**Sec. 68 (c)—Right of usufructuary mortgagee to**
renew mortgage money by sale of mortgaged property. Where usufructuary mortgage deed provided for the recovery of the amount due “from the

mortgaged property " the Court granted a decree for the sale of the property where the mortgagee, being dispossessed of the property sued for recovery of the mortgage money. *Stanley C. J. & Burkit J.*

Narpat v. Ram Saran 5 A. L. J. 133.

—————*Incomplete transaction—Failure of mortgagee to pay mortgagor or previous incumbrance.* Held, by the Full Bench that in the absence of a special contract to the contrary, when a mortgagee fails to pay to the mortgagors or a previous incumbrance the whole or a portion of the mortgage money at the time fixed for payment or within reasonable time when no time is fixed therefore, the mortgage transaction remains incomplete and the mortgagee is not entitled to any benefit under the mortgage even on payment of the mortgage money; it is immaterial whether the non-payment of the unpaid mortgage money has, or has not, caused inconvenience or loss to the mortgagor. 16 P. R. 1884 dissented. (F. B.)

Gokal Chand v. Rahman, 9 Pun. L. R. 152.

Mortgage—Usufructuary mortgage—Ouster of mortgagees—Adverse possession.—One of the purchasers of the equity of redemption in a usufructuary mortgage ousted the mortgagees and took possession of the entire mortgaged property which he retained for more than twelve years: but it was found that he never denied the mortgagor's title, and that the mortgagors had no right to present possession. Held that there was no adverse possession as against the other mortgagors, although there was as against the mortgagees, although there was as against the mortgagees, and that the right of redemption was not lost: the ouster of the mortgagees did not entitle the plaintiff to re-enter into possession.

Bannerji & Aikman J. J.

Ismadar Khan v. Ahmad Husain A. W. N., 1908, 25.

———**Regulation XVII of 1806. Sec. 8—Mortgage by way of conditional sale—Condition as to payment of mortgage—money by instalments and mortgage operating as sale in default of payment—Stipulated period.** Where the mortgagor agrees to pay the mortgage—money by instalments, and it is stipulated that in default of payment of any instalment the mortgage shall operate as a sale, the mortgage is not one by way of conditional sale and the provisions of the Regulation XVII of 1806 are not applicable to it.

A mortgage cannot be foreclosed before the expiry of the full terms of the mortgage, when mortgage money is payable by instalments and default is made in payment and it is provided in the mortgage bond that the

mortgage will operate as sale in case of default in payment.

Chatterji & Johnstone J. J.

Hargopal v. Bhagwan Sahai 9 P. L. R. 99.

———*Incomplete transaction.*—When the part of the mortgage—money remaining unpaid by the mortgagee consisted of a sum which the mortgagor had agreed should be withheld by the mortgagee till mutation of names, and a small sum out of that promised for expenses of the deed and the mutation of names did not take place at all.

Held, that the mortgage could not be held as incomplete for default in payment of the mortgage money

Chatterji J.

Mangladha v. Lalchand 9 P. L. R. 149.

———*decree—Order for sale—costs—Costs if can be recovered from the mortgagor personally—Transfer of Property Act Sec. 90*—The Costs awarded by a decree directing the sale of mortgage property form part of the mortgage decree and the decree holder must proceed to recover the costs by a sale of the mortgaged property in the first instance, and it is only when the mortgage property is found to be insufficient to satisfy the decree that the decree holder can proceed against the other properties of the mortgagor in the manner provided by Sec 90 of the Transfer of Property Act *Rutnassar v. Jasubi* I. L. R. 14 Cal. 185 (1886) and *Damodar v. Budh Kumar* I L. R. 10 All. 170 (1888) Distinguished. *Magbul v. Lalta* I. L. R. 20 All. 523 (1898).

Gaidt & Chitty J. J.

Raj Kumar v. Sheo Narain 12 C. W. N. 364.

———*Construction—Future interest—Interest to date of realisation.* A mortgage decree directed payment of mortgage money and costs of the suit with future interest to the date fixed for payment.

Held, on a construction of the decree—That the decree holder was entitled to interest until realization. *Maharaja of Bharatpur v. Ram Kann* 5 C. W. N. 137; S. C. L. R. Z. I. A. 35; I. L. R. 23 Al. 181 (1901), and *Rani Sundar v. Rai Shyam* 11 C. W. N. 249; S. C. L. R. 34 I.A. 9 (1906) followed.

P. C.

Raja Gokaldas v. Sheth Ghasiram 12 C. W. N. = 7 C. L. J. 233 = 5 A. L. J. = 10 Bom. L. R. 144.

———*Unregistered deed sale of the property hypothecated—Purchaser having notice of the mortgage—Property preempted by the defendant whether notice to preemptor.*—A right of pre-emption is not a right of purchase but is simply a right entitling the preemptor to be substituted for

the vendor as purchaser and to stand in his shoes in respect of all the rights and obligations arising from the sale under which he derives his title. He can only get what the vendee bargained for.

Where, therefore, a vendee purchases with notice of a prior unregistered encumbrance and the property is preempted, the promptor takes subject to that mortgage even if the existence of that mortgage was concealed from him.

Stunley C. J. & Burkill J.

Tejpal v. Gidhari Lal 5 All L. J. 112

— — — *Pror. Right of, to redeem a Prior Mortgage—Foreclosure in favour of prior mortgage, effect of, when junior mortgage no party—Mortgagee, pursues right of, to redeem a prior mortgage when property already foreclosed by the prior mortgage—Held, that where a property has been foreclosed by the first mortgagee in a suit to which the second mortgagee was not a party the first mortgagee is entitled to redeem the second mortgage; the holder of the second mortgage cannot, however, redeem the first mortgage*

(*Husambhai v. Umaji* 25 Bom. followed)

Chamier & Griffin J. C.

Kedar Nath and others v. Saiyid Hafiz Ali and others 10 O. G. 356.

N. W. and Oudh, Land Revenue Act S 233—Revenue Court, partition effected by, right to challenge by a person having no opportunity to raise objections—Civil Court jurisdiction of, to consider those objections.—Held, that S. 233 of the N W P. & Oudh Land Revenue Act, 1901, which provides in effect that the Civil Courts shall not interfere with the partition and union of *Mahals* does not apply to a suit with regard to a partition in which the plaintiff had no opportunity of having his objections considered by the Revenue Court.

Chamier J. C.

Bhabhuti v. Gulab 10 O. C. 363.

Negotiable Instruments Act, Section 13—Hundi—not payable to order or bearer—negotiability—Suit by Transferee—Cause of Action against drawer—Suit under Chapter XXXIX, Civil Procedure Code.—Where a hundi was not expressly made payable to order or to bearer, but simply contained the words: "Please pay the amount hereof on ascertaining the means and address as usual as in case of Hundis" and it was not alleged that there was any omission of words in writing the Hundi, nor was it proved that by any special local custom such a Hundi could be negotiated—held, that the Hundi not being a negotiable instrument as defined in Section 13 of the Indian Negotiable Instruments Act, the transferee of the Hundi had no cause of action against the drawer in a suit

based on the hundi.

Held, further that the Plaintiff had also no cause of action against the endorsee on the suit as framed as the Hundi had not been presented to him nor any notice of dishonor given to him. *Crouch J. C.*

Gokaldas vs. Desai Eshwerchhai Jiwabhai 1 Sind L. R. 57.

Nuisance—Public—Killing of cows by Muhammadans—Custom— Under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with.

Stanley C. J. & Burkill J.

Shahbaz Khan v. Umrao Furi, A. W. N. 1908, 64 = 5. A. L. J. 147.

Principles—Alienation by one co-parcener to a stranger—Method of partition. It is not only competent to a Court in effecting a partition to allot to the shares of one co-parcener the property which the co-parcener has alienated to a third party, but, it will also endeavour to do so if the same can be done with due regard to the interests of all the co-parceners.

Wallis & Sunkaram Nair J. J.

Munusamy v. Veerabadra, 17 M. L. J. 617.

Partition—Mortgage of undivided share—Allotment of property on partition—Charge for owelty money—Priority. In the absence of any suggestion or evidence that the partition of a joint estate was unfairly or improperly made to defeat claims of creditors, the sharers thereof, who have to receive sums of money by way of owelty from a co-sharer under a partition decree creating a charge on the allotment made to him have priority over the mortgagees of his undivided share in the joint estate.

The fact that the mortgagor co-sharer entered into possession of the allotment made to him, before paying the owelty money for which there was a charge created, did not alter or affect the position.

Maclein C. J. Stephen & Woodroffe J. J.

Shahbazadat v. Robert Savi, 12 C. W. N. 373.

Partnership—Suit for dissolution of—Necessary parties. A suit for dissolution and winding up a partnership involves the determination of the plaintiff's share and the taking of accounts and the plaintiff's share

could not be determined definitely without making all the parties interested in the partnership parties to the suit and the accounts could not be properly taken in the absence of any of them.

Rampini & Sharfudin J. J.

Srinath Pal v. Hari Charan, 7 C. L. J. 266.

Party wall—Raising at Plaintiff's expense, used by Defendant—Injunction & removal encroachment—Where the Plaintiff and Defendant owned a common party wall, which was raised to a greater height by the Plaintiff at his own expense, and thereafter, the Defendant placed his structures on the upper portion of the wall so built at the Plaintiff's expense, held that the injunction to remove such structures on the ground of there being an encroachment, had been rightly refused by the Lower Court.

Lucas & Knight J. C.

Motiram vs. Pohumal 1 Sind L R 66.

Patwari's rates and cesses—Assignee of Government revenue in an imperfect pattidari village—Right to recover rates and cesses paid on account of a patti owned by another co-sharer.—The plaintiffs were the assignees of the Government revenue in an imperfect pattidari village. They sued to recover, as such assignees, patwari's rates and local cesses for certain years from the owner of a patti in the village, but were unsuccessful. They subsequently sued to recover from the owner of the same patti certain sums which they had paid as patwari's rates and cesses and which they alleged were properly payable by the defendant. Held that the latter suit would lie and was not barred by reason of the decision in the former.

Giffin J.

Nasim Singh v. Keshu Das, A. W. N. 1908. 20.

Practice—Duty of Courts to do justice caused by its own acts—A Court ought to relieve parties against the injustice occasioned by its own acts and oversight at the instance of the party against whom the relief is sought.

Maclean C. J. Harington Fletcher J. J.

Lakhan Chunder Sen v. Madhu Sudan, 12 C. W. N 326.

Dismissal for default—Setting aside order, conditions as to costs.—The Plaintiff had been remiss in prosecuting his claim in the lower Court, and on the final day of hearing he remained absent, and sent a medical certificate to the effect that he could not attend the Court. Held, that taking into consideration the large amount of property involved in the suit, the order of dismissal for default should be set aside and the plaintiff given one more opportunity, on his paying all prior costs except the Court fee stamp.

Lucas & Knight J. C.

Mir Mahmud Bux vs. Pir Agha Shirin Jan 1 Sind L R 42.

Practice—Death of a party—Abatement—If on the death of one of the defendants, his heirs are not made parties to the suit by substitution in time the whole suit is to be dismissed even where no relief against the deceased defendants or his heirs was asked for specifically.

Rampini & Sharfudin J. J.

Srinath Pal v. Hari Charan, 7 C. L. J. 266.

———**Interference in revision—Order technically wrong but one what the applicant himself assented to.** Where an order complained of was wrong and indefensible of taken literally the chief Court refused to interfere in revision where it appeared that it was the order which the applicant had at previous stage assented to.

Irwin J.

Moung Shwe v. Savasundaram, 13 Bur. L. R. 369.

———**Proceedings on Sunday—Whether void—Lord's day Act—application to India.**—A Munsiff went on an inspection on Sunday. While there the parties entered into a compromise which was recorded by him and a decree passed on the spot. Held that proceedings of the Munsiff were not vitiated by the fact that they were taken on a Sunday. Lords Day Act does not apply to India.

Stanley C. J. & Burkitt J.

Sheoram Tiwari v. Thakur Prasad 5 AL L. J. 107.

———**Wajib-ul-arz—Construction—Hindu widow's brothers.**—Not entitled to pre-empt purchaser estopped from denying the sale. A wazib-ul-arz of a village gave a right of pre-emption to the brother of the vendor and then to-cosharers. Further on it provided that a Hindu widow succeeding to her husband would have no right to sell to, her brother or father.

Held that the wazib-ul arz must be read as a whole and the brother of a Hindu widow had no right to preempt and could not resist a claim by a cosharer for pre-emption. It does not be in the mouth of the person purchasing the property in violation of the terms of a wazib-ul-arz to say there has been no sale.

Bannerji & Richards J. J.

Ram Niwaz v. Dakho, 5 A. L. J. 182.

Pre-emption—Transfer by vendee before suit for pre-emption is filed—Right of pre-emptor who has obtained decree against vendee alone to sue transferee—Limitation Act Art 10.—The vendee exchanged some of the land purchased by him with the land belonging to the present defendants, subsequently the plaintiff obtained a decree against the vendee alone by right of preemption for possession of the land transferred by the vendee to the present defendants the plaintiff filed the present suit against them; Held that the suit must be regarded as one for preemption and

not having been filed within of limitation prescribed therefore must be dismissed as barred by limitation.

Johnstone J.

Roushan 9 Pun. L. R. No. 75.

—**Mohmedan Law**—*Claim for must be without lady—question of fact mainer.*—The right of preemption must be exercised and the claims necessary to give effect to it must be made with the utmost promptitude and any unreasonable and unnecessary delay is to be construed as an election not to preempt, whether there has been such delay is a question to be determined upon the facts of each particular case the plaintiffs claimed the right to preempt by reason of their having previously acquired a share in the property they had also obtained the transfer of a zuri peshgi mortgage binding the share the sale of which was the occasion of the present suit. In the course of the suit the purchaser Defendant deposited the mortgage amount in court and the same was withdrawn by the plaintiff. Held that until a decree for preemption was made the purchaser owned the land, and had a right to redeem, and that the taking out of the money by the plaintiffs as mortgagees was no recognition of anything more than that and was quite consistent with their claim to preempt. (P. C.)

Vaijnath v. Deo Nandan 12 C. W. N. 419.

Pre-emption—*Final decree—Dated fixed for preferring an appeal not expiring.*—A decree does not become final before the date allowed for preferring an appeal expires *Sheikh v. Mokuna* 1 All. 182, and *Ram v. Gaya* 7 All. 107, followed.

Aikman J.

Gopal Das v. Mamman 5 Al. L. J. 186

—**Wajib-ul-arz**—*Construction of document.*—A village wajib-ul-arz provided that in the case of a sale by a co-sharer the first right of pre-emption would be in the uterine brother of the vendor, and the next class of preemptors would be co-sharers in the village; but the same wajib-ul-arz further provided that a Hindu widow succeeding to her husband in the absence of male issue would have full powers of sale, but would not be competent to sell to her brother or father. Held that the brother of a Hindu widow could not as vendee from his sister resist a claim for preemption brought by co-sharers in the village.

Bannerji & Richards J. J.

Ram Niwaz v. Dakho, A. W. N., 1908, 59.

—**Waiver**—*Pre-emptor receiving from the vendee mortgage money due to him.* Held, that pre-emptor cannot be deemed to have waived his right of pre-emption by simply receiving from the vendee mortgage money due to him on the security of the property, subject of the sale.

Johnstone & Kensington J. J.

Fasal Dad v. Saman Singh, 9 P. L. R. 101.

——— *Wajib-ul arz—Construction of document "Intiqal."*—Held that the word *intiqal* used in the pre-emptive clause of a *wajib-ul-arz* was wide enough to include a sale with an option of repurchase within a time specified. *Sheoratan Kuar v. Mahipal Kuar* (I L. R. 7 All, 258) followed. *Sheobadal Singh v. Amin Singh* (Weekly Notes, 1903, p. 16) distinguished. Richards J.

Ram Narain v. Ganga Ram, A. W. N. 1908, 19.

——— *Limitation in suits based on foreclosure—Order absolute, time to begin from—Suits for pre-emption based on a foreclosure decree passed on a compromise, maintainability of—Oudh Laws Act. 1876, Chapter II—Limitation Art. 120—Transfer of Property Act, ss. 86, 87 and 93.*—Held, that pre-emption could be claimed in the case of a decree for foreclosure passed on a compromise made in a suit brought for sale of the mortgaged property on the basis of a simple mortgage.

Held further, that the limitation for a pre-emption suit brought on the basis of foreclosure decree is to be reckoned from the date when the decree is made absolute.

Chamier & Sanders J. C.

Arjun Singh v. Pandit Iqbal Narain 10 O. C. 374.

——— *Perpetual lease, no suit for pre-emption in case of—Lease not a sale—Oudh Laws Act s. 9.*—Held, that no right of pre-emption can be claimed in respect of a perpetual lease as such a lease is not a sale within the meaning of Oudh Laws Act. *Ram Faqir v. Sheo Ratan* distinguished.

Griffin & Chamier J. C.

Babu Baldeo Prasad v. Sheikh Ali Husain 10 O. C. 348.

Probate—Bequest of life interest—legatee not entitled to probate—Amendment of application for probate to include prayer for letters of administration not allowed.—Where a Hindu testator bequeathed life interests in the income of certain specified properties in favour of his widows and the remaining property in favour of his widows and the remaining property in favour of his son and one of the widows obtained a probate in respect of the property whose income was bequeathed to her. Held that the widow not being mentioned in the will, as executrix either expressly or impliedly was not entitled to the probate. Held also that as the son had preferable right to be appointed administrator of the estate amendment of the application for probate could not be allowed to include a prayer for grant of letters of administration with a copy of the will.

Chatterji J.

Meharchand v. Lachun 9 P. L. R. No, 73,

Punjab Alienation of Land Act (XIII of 1900)—*Retroactive effect of—Vendor and purchaser—Sale—Time for delivery of possession*—The provisions of the Punjab Alienation of Land Act do not apply to transactions completed before the Act came into force and a suit for possession of land is not barred by the Act when the right to claim possession had occurred before the Act came into force.

When the sale-deed does not fix any time for delivering possession by vendor to the vendee, in the absence of any special agreement, it may fairly be presumed that it was intended to deliver possession within the reasonable time.

Lalchand J.

Sundar Lal v. Ram Singh, 9 P. L. R. P5.

Punjab Courts Act (18 of 1889) s. 40 (1) (b)—*Valuation of suit for declaration that alienation of land is not binding on the plaintiff suit after alienors death*—For the purposes of further appeal under s. 40 (1) (b) of the Punjab Courts Act the value of a suit for a declaration that an alienation of incestral land assessed with revenue by a male proprietor is not binding on the plaintiff after the alienor's death is the 30 times revenue and not the amount of the consideration for the alienation. (F. B.)

Jalla v. Gehna 9 P. L. R. No. 79.

Punjab Courts Act (XVIII of 1884), sec. 70 (1) (c)—*Punjab Tenancy Act (XVI of 1887), sec. 4 (1)*—*Revision—Civil cases—Land suit—Suit for possession of unculturable land outside abadi—Question as to jurisdiction—Power of Chief Court to revise findings of fact relating to question of jurisdiction*. Held, that the Chief Court is competent in the exercise of its revisional power in determining question of jurisdiction of lower Courts to consider findings of fact arrived at by the lower appellate Court.

Held, that a suit for possession of unculturable land outside the *abadi* of a village attached to a well and used for stocking *bhusa* and *khurlis* is a "land suit."

Chatterji J.

Gandu Singh v. Natha, 9 P. L. R. J.

Punjab Customary Law—*Forfeiture of ancestral property of a criminal right of reversioner*—When ancestral property of a person subject to Punjab Customary Law is attached and sold by order of a Criminal Court under the Indian Criminal Law, for his committing a crime or absconding the sale disposes of the life interest of that person only but not of the right of inheritance after his death of his male lineal descendants or of collaterals descended from the original holder of the property, upon such a sale the fee simple of the property is sold and nothing remains for the heir to inherit.

P. R. 50 of 1898 approved a reversioner has such definite interest in the

ancestral property that the owner in possession cannot by his crime or absconding cause that interest to be forfeited. (F. B.)

Sadbhusing v. Secretary of State 9 P. L. R. No. 19.

Punjab Pre-emption Act 2 of 1905—Operation of—Sale of agricultural land prior to May 1905,—Right of vendee superior under the Old Act but inferior under the new Act. The priorities given by s. 12 of the Punjab Pre-emption Act of 1905 are applicable to claim to the right of pre-emption with reference to a sale executed before the commencement of the Act. Where the vendee had a superior right of pre-emption under the Act of 1879 to the pre-emptor the saving clause of s. 2 (3) of Act 2 of 1905 protects him against that pre-emptor who has superior rights under the Act 2 of 1905. (F. B.)

Surta v. Fatechand, 3 P. W. R. No. 18.

—————(3 of 1893), s. 4—**Succession to tenancies created under the Act.** The special tenancies created under Act 3 of 1893 fall within the occupancy rights contemplated under s. 8 and in matters of succession are also governed by the rules laid down in s. 59 of the Punjab Tenancies Act 16 of 1887. *Clarke C. J. & Reid J.*

Sahibzada v. Jornaya, 9 P. L. R. No. 24

—————**Tenancy Act (16 of 1877), ss. 59, 111, 112—Landlord and tenant—Occupancy rights—Succession—**The provisions of ss. 111 and 112 of the Punjab Tenancy's Act override s. 59 of the Act, and on entry in *wajib ul-arz* prior to 1871 with respect to the succession to land in which a right of occupancy exists has the force, of an agreement parties can by written agreement settle on a law of succession different from the succession prescribed in the Act. *Clarke C. J.*

Puran v. Manum, 9 P. L. R. No. 76.

—————**Endowments Act (20 of 1863), ss. 14, 18—C. P. Code, s. 539**
Suit for removal of duly constituted—Manager—Bengal Regulation 19 of 1810. As a general rule a duly constituted manager of a religious institution can not be removed from his office without bringing against him a civil suit with the previous sanction required under s. 14, and 18 of Act 20 of 1863 or s. 539 C. P. Code and that it is not open to a self constituted temple committee to take the matter into their own hands for removing or suspending him or appointing his successor but no such sanction necessary where the manager sues to be reinstated after he is illegally ousted of his office. The Bengal Regulation of 19 of 1810 is applicable to the Punjab under Act 20 of 1863.

Bansidhar v. Changa Ram, 9 P. L. R. No. 20.

—s. 55 (2)—*Defect in title no fraud.*—A defect in title will render the vendor of immoveable property liable to damages in dependence of any fraud on his part. The vendor is presumed to guarantee his title absolutely to the property and if after the purchase the vendee discovers a material defect in the property he is entitled to rescind the contract.

Shaw J. C.

Sadhu v. Nga si Gy. 13 Burma L. R. 393.

Punjab Municipal Act (XX of 1891), Sec. 92 and 94—Execution of—partition wall over tharra—Held, that under Sec. 92 of the Punjab Municipal Act a person must obtain sanction of the Municipality before he can create a new partition wall over the thara of his binding.

Clark C. J.

Basant Ram v. King Emperor 9 P. L. R. 93

—**Pre-emption Act (II of 1905).**—*Retrospective effect of.*—Held, that the Punjab Pre-emption Act has retrospective effect. Sec. 2 (3) of the Act specifically deals with vested rights and has deprived parties of the rights to pre-empt as stated therein.

Reid J.

Bahadur v. Alla 9 P. L. R. 49.

—**Tenancy Act (XVI of 1887), secs. 53 and 60—Landlord and Tenant—Occupancy rights—Alienation of—Acquiescence of landlord Omission to sue for cancelment of alienation.**—Held, that from mere omission on the part of the landlord to sue for 15 months for cancelment of alienation of occupancy right, his acquiescence in the alienation cannot be inferred.

Mohar Singh v. Jhanda 9 P. L. R. 111.

—**Secs. 77 (3) (d) and 100—Jurisdiction of Civil and Revenue Courts—Suit for compensation for branches of trees cut by defendant—Allegations in plaint.**—It is settled law that ordinarily the question of jurisdiction is determined by the plaint and the allegations of plaintiff, and the pleas of defendant are immaterial.

The plaintiff sued for compensation for value of branches of a tree cut by the defendants; they pleaded that as occupancy tenants they were entitled to cut the branches. The Munsiff found the plea of the defendants not established. On appeal the District Judge made a reference to the Chief Court for the decree in the case to be registered as the decree of the Revenue Court.

Held, that the suit not being cognizable by the Revenue Court, the decree could not be registered as a decree of the Revenue Court.

Johnstone & Shah Din J. J.

Fakiria v. Dhani Nath 9 P. L. R. 71.

Railways Act (9 of 1890)—Sections 72 and 54.—Delivery, completion of—Non-liability as creditors—Rules framed by the Railway—*Held*, that a rule, by which the Railway Administration disclaimed responsibility for goods left on their premises unless certain conditions were fulfilled, one of which was that the goods should have been actually booked and a receipt given for them, by a duly authorised Agent or Clerk of theirs, was a rule neither unnatural nor contrary to the General Law of Contracts. The rule imposed conditions with respect to the receiving of goods which were specially authorised by Section 54 of the Railways Act. *Held* further, that the goods having been lost after they had been marked by the Railway authorities, but before they had been weighed or loaded, there was no complete contract for the carriage of goods, but mere negotiations for the same, and they were not therefore liable as carriers under Section 72 of the Railways Act.

Lucas & Crouch J. C.

The North Western Railway v. Shiv Narain, 1 Sind L. R. 78.

Registration—Unregistered lease—Possession for more than twelve years under—Interest of a permanent tenant by adverse possession—Admissibility of lease in evidence to show nature of plaintiff's possession—Registration Act, S. 40. Where A sued B to recover possession of lands which B was alleged to have re-entered after granting them to A on a permanent lease and it was found that the lease was unregistered.

Held, that A could prove that he had been in enjoyment of the lands under the said lease for more than 12 years before dispossession and had thereby acquired the interest of a permanent lessee in the lands by adverse possession.

Held further, that the unregistered lease cannot be received as evidence of such transaction which must be proved by other evidence. *Thakore v. Ramanj*, 27 Bom. 515, dissented from. *Benson & Wallis J.J.*

Kunparthi v. Kurnam, 3 M. L. T. 187.

Religious Trusts—Debts—Loan incurred by trustee—Personal liability of trustee. A creditor who advances money to a trustee for the purposes of the trust can *prima facie* hold the trustee personally liable, leaving the latter to his own remedies if any, against the trust property.

Subramanya Aiyar J.

Pasupatia v. Sundarappier, 17 M. L. J. 615.

Res judicata—Suit in Revenue Court to enforce acceptance of pottah—Dismissal of—Suit in Civil Court to recover rent based on the tender of pottah—If a bar. The plaintiff sued in the Revenue Court to enforce the acceptance of a pottah, and the suit was dismissed.

Held, that the decision of the Revenue Court cannot operate as res judicata in a suit brought by the plaintiff in the Civil Court to recover rent based on the tender of the puttah. *Rangaiyya appa Row v. Ratnam*, 20 Mad. 392, *Hokal Mandar v. Padamanand Sing*, 29 Cal. 702, P. C.; and *Gomti Kumar v. Gudri*, 25 All. 139, applied. *Vedaachala v. Bomiappa Mundaliar*, 27 Mad. 65 referred to.

Wallis & Miller J. J.

Kidampi Vencatachariar v. T. Lakshmi Dass, 3 M. L. T. 188.

Succession Certificate Act 1889 S. 4—*Joint decree-holders, right to execute a decree passed in favour of*—*Execution of decree by a survivor of two joint decrees-holders*—*Heir of a decree-holder, right of to execute a decree*.—Two decree-holders were awarded certain sums under a decree jointly and certain other sums severally. One of the decree-holders died and the other claimed to execute the whole decree because she was the survivor of the joint decree-holders and because she was the heir of the other decree-holder, and that she could do so without producing Succession Certificate.

Held, that so far as the sums awarded jointly were concerned the surviving decree-holder could execute the decree but she could not be allowed to execute it with respect to the sums awarded severally without the production of a Succession Certificate.

Mohamed Yusuf v. Abdar Rahim 26 Cal 839 dissented from.

Chaimer & Griffin J. C.

Rai Jagatpal Singh v. Thakurain Bilas Kunwar 10 O. C. 378.

Small Causes Courts Act, (Provincial) Section 25—*Finding not according to Section 203 Civil Procedure Code*—*Interference*—*Business carried on by co-parcener*—*Presumption*.—*Held*, (1) where the judgment of the Small Causes Court Judge does not contain the points for determination and the decision given thereon, as provided for by section 203 Civil Procedure Code, the High Court will interfere with his decision.

Lucas & Crouch J. C.

Thawardas v. Rochiram, 1 Sind L. R. 118.

Specific Relief Act Section 35—*property transferred under illegal award*—*Stifling Criminal Prosecution*.—*Right to recover back*—*Particeps criminis*—**Contract Act Section 23**—Where property had been transferred in pursuance of a decree based on an award, the object of which was the stifling of a criminal prosecution for embezzlement, the plaintiff being *particeps criminis*, the Court will not allow him to recover back the property unless as required by Section 35 of the Indian Specific Relief Act, he proves that the defendant was more to blame than him.

self or that some undue pressure was brought on him to consent to the reference and award. If he himself or his friends were the prime movers in arranging the reference, the Court will not give him relief though he may have been an accused person in the criminal case.

Lucas & Knight J. C.

Hari Velji & Another vs. Balchand Isardas 1 Sind L. R. 47.

Suit—Maintainability of—Cause of action—Assignment—chase in action—Right of assignee to sue when transfer is conditional. The payee of a promissory note, which was not negotiable, mortgaged it with the plaintiff and agreed that assignment was to continue until all moneys due to the assignee plaintiff remained unpaid.

Held, that the plaintiff's suit as assignee to recover the amount due on the pre-note from the maker of it was not maintainable.

Ratligan J.

Nihal Chand v. Ali Bakhsh, 9 P. L. R. 63.

Transfer of Property Act, s. 37—Foreclosure decree, sums paid by mortgagor tenants—Order absolute, application for, in lieu of a portion of the decretal amount—Money paid by the mortgagor to discharge a portion of the decree. **Held,** that where a mortgagor pays only a certain sum under a foreclosure decree but fails to pay up the whole and an application is made by the mortgagee for an order absolute to foreclose the mortgaged property in lieu of the unpaid portion, the mortgagor can not ask the Court that the sums paid by him under the decree should be returned to him before the decree is made absolute.

Chamiers & Sanders J. C.

Syed Fida Hussain v. Lala Chaanga Mal, 10 O. C. 354.

Sec. 99—Mortgage—Sale of mortgaged property in execution of a decree for costs—Sale confirmed—Subsequent suit for redemption. Part of property the subject of a mortgage was sold in execution of a decree for costs, otherwise than in accordance with the provisions of section 99 of the Transfer of Property Act, 1882 and was purchased by the assignees of the mortgagee decree-holder, and this sale was confirmed. **Held** that the mortgagor could not obtain redemption of the portion of the property so sold, although—the integrity of the mortgage having been broken up—it was possible for him to obtain a decree for redemption of the unsold portion. *Tara Chaml v. Imdul Hussain* (18 All, 325) applied.

Kershaw C. J. & Bannerji J.

(This is an old case of 1898).

Mulraj Makundlal v. Jamna Kaulapuri, A. W. N., 1908, 48.

———**Sec. 99—Civil Procedure Code, s. 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree.** Even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple money decree he is precluded by sec. 90 of the Transfer of Property Act, 1882, from bringing the mortgaged property to sale in execution of the simple money decree. *Madho Prasad Singh v. Bijnaik*, (Weekly Notes, 1205, p. 152) followed. But if such a sale does in fact take place and is confirmed and a certificate is granted to the auction purchaser the sale cannot afterwards be impeached upon the ground that it was in violation of section 99 of the Transfer of Property Act. *Sonu Singh v. Bihari Singh*, (33 Cal 283) dissented from. *Aikman & K. Hussein J. J.*

Kashan lal v. Umrao Singh, A. W. N., 1908, 49.

Vendor and purchaser—Personal covenant—Indemnity against disturbance to vendee does not enure for the benefit of pre-emptor.—A condition in the original deed of sale in which the vendor guarantees his title in the original vendee, and in which he agrees to compensate that vendee if disturbed's one which does not enure for the benefit of the pre-emptor who succeeds in obtaining a decree for possession by right of pre-emption.

Robertson & Shah Din J. J.

Sand're Khan v. Bhana 9 P. L. R. 43.

Will—Construction of will—Uncertainty—Bequest for purposes of popular usefulness or for purposes of charity.—By her will, N after making various bequests bequeathed the residue of her estate as follows:—

“As to whatever immovable (and) moveable (property) and property in cash belonging to me may be in excess or may remain over as surplus after a disposition shall have been made in accordance with what is stated in the clauses above written, my abovementioned six executors are to make use of the same in such manner as they may unanimously think proper for purposes of popular usefulness or for purposes of “charity.” And I give to them (i. e.) my abovementioned trustees full authority to use the same in that manner.” *Held*, that the gift of the residue was bad for uncertainty. *Runchordas v. Parvatibai* 22 Bom. 725, relied on.

Jenkins C. J. & Beaman J.

Trikumdas v. Haridas 31 Bom. 583.

Zaildari—Claim of a candidate of the prevailing tribe in a zail—Superior right.—*Held*, that, a person who belongs to a prevailing tribe in a zail and is also otherwise fit to act as a zaildar, should be given preference over other candidates for post.

Jafar Khan v. Raja Azimullaah Khan—3 P. W. R. 3—9 Punjab L. R. 110.

THE LAWYER.

1st MAY 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL)

Accounts—Settlement of account—No fraud or undue influence used in settlement—Promissory note for the amount found due—Re-opening accounts, not allowed. Where two persons have mutual dealings and accounts and one of them of his own free-will and accord and without any fraud practised or undue influence exerted by the other, waives his right to an examination of the accounts for the purpose of ascertaining the balance due and agrees to treat a gross sum as due from him and executes a promissory note, it must be treated either as the result of a settled account or as a settlement by compromise, and in either case it cannot be reopened. *Wallace* (1853) 5 Moo. I. A. 395 followed. *Chandavarkar & Knight J. J.*

Magniram v. Laxmidas, 10 Bom. L. R. 291.

Acquiescence—Whether a question of Law and a good ground for Revision under sec. 70 (b) of the Punjab Courts Act XVIII of 1889 as amended by Act XXV of 1889. Held that Acquiescence is not a question of fact but of Law and consequently it is a good ground for revision under sec. 70 (b) of Act XVIII of 1884 as amended by Act XXV of 1889.

Held, also that there is nothing whatever in the following facts to indicate that D and other reversioners of R acquiesced in the gift of his holding in favour of S and others.

R transferred whole of his property to S. and others by a deed of gift dated 3rd January, 1886. Mutation was finally sanctioned on 27th March, 1887. With the exception of 17 Kanals which R. held in his own name the rest of the property included in the gift, 158 ghumaos was possessed by a prior mortgagee G. Despite the gift R. never parted with possession of these 7 Kanals and the donees either before nor after donor's death ever made an attempt to redeem the prior mortgage. But they took actual possession of the 17th Kanal's after R's death which took place in

1891. Within one year however, of R's death his reversioner (D and others) instituted a suit for a declaratory decree in respect of the mortgaged portion. and for possession of 17 Kanals of the land on 8th February 1892, this plaint was rejected on account of their failure to amend it. On 4th January 1894, they sold whole of R's estate to B."

Lalchand J.

Shair v. Sidhu, 3 P. W. R. 833.

Administration bond—*Whether invalidated by mistake of a Court.* An administration bond is not invalidated by reason of mutual mistake on the part of the Court and the surety, or misrepresentation by Court."

Mitra & Caspersz J. J.

Rajoni Mohan, 12 C. W. N. 481.

Adverse possession—*Mortgagor and mortgagee*—*Assertion of proprietary right by mortgagee after invalid foreclosure proceedings.* Held, that a mortgagee, who has taken fruitless foreclosure proceedings, can not by asserting himself to be the proprietor and getting mutation in Revenue records in his favour, start a possession adverse to the mortgagor.

William Clarke C. J. & Reid J.

Indar v. Asa, 9 P. L. R. 253.

Agra Tenancy Act, ss 164 and 165. A suit under section 165 of the Agra Tenancy Act differs from a suit under section 164 of the Act in that in the former suit only the actual collections made by the defendant can be taken into account.

Abdul Rashid v. Abdul, 1908, A. W. N. 68=5 A. L. J. 117.

———**S. 177—Appeal—Jurisdiction—Question of proprietary title.** Where in a suit for arrears of rent the defendants pleaded that the relation of landlord and tenant did not exist between the parties and that the defendants were sub-tenants of certain persons whom they described as tenants in chief, it was held that this plea raised no question of proprietary title within the meaning of section 177 of the Agra Tenancy Act, 1901. *Dal Chand v. Shamla* (Weekly Notes, 1905, p. 46 and *Chhitar Singh v. Rup Singh* (Weekly Notes, 1906, p. 247) distinguished.

Karamat Husain J.

Ahmad-Ullah Khan v. Murlu, A. W. N., 1908, 69.=5 A. L. J. 128.

Appeal, Decree In—*When such decree simply confirms decrees of lower Court, it does not enlarge the time fixed by the original decree for the performance of conditions precedent.* The decree of the lower Court provided that 'on the plaintiff's paying into Court the balance of consideration,

Ra. 10, within a month from this date,' defendant should execute a sale-deed of the suit land. The money was not paid within the month and the defendant preferred an appeal after the expiry of the month. The Appellate Court simply confirmed the decree of the lower Court and dismissed the appeal. Within a month of the appellate decree the plaintiff deposited Ra. 10 and applied for execution of the decree:—*held* that he was not entitled to execute the decree, as he had not made payment within the time fixed by the original decree and as the appellate decree cannot under the circumstances be held to have enlarged the time fixed by the original decree. The appellate decree simply confirming the original decree cannot be read as giving the plaintiff one month from the date of the decision on appeal. Such an extension can be claimed only if expressly or impliedly given by the Appellate Court. *Bkup Indar Singh v. Bijai Bahadur Singh*, (23 All, 155), distinguished.

Benson & Wallis J. J.

Ramaswami Kone v. Sundara Kone. 31 Mad, 28.

Assignment—Right of a person to challenge. An assignment can not be questioned as unfair and unreasonable by a person who was not a party to the assignment.

P. C.

Raja Rai v. Debi Dayal, 12 C. W. N. 393,

Benamidar—Mortgage—conveyance without consideration. A benamidar can not bring a suit for recovery of a mortgage debt.

A mortgagee assigned over his interest under the mortgage to the plaintiffs who instituted the present suit against the mortgagors for recovery of the mortgage debt. It was found that the assignment was a benami transaction and was intended to put the mortgagors into difficulty.

Held—That the plaintiff's suit was rightly dismissed. *Lala Achal v. Raja Kazim*, 9 C. W. N. 477.=L. R. 32, I. A. 113; 27 All. 271 (1905) distinguished.

The mere non-passing of consideration is not sufficient to show that a transaction is benami.

Mitra & Caspersz J. J.

Munshi v. Mahomed, 12 C. W. N. 409.

Bengal Tenancy Act (VIII B. C. of 1885) Ss 11 and 12.—Release by co-sharer, if transfer Stamp Registration—Non payment of, landlord's fee, if invalidates, Transfer—Bengal Tenancy Act (Validation) Act 8. 1.—Breach of covenant—Cesser of liability. Certain co-sharers in a permanent tenure by a deed, dated 2nd December 1893, which was registered in Book 1, under S. 51 of the Registration Act, relinquished all their right, title and interest and claim in the tenure in favour of the remaining

co-sharer who, it was stipulated, was to remain in possession and was to be entitled to sell the tenure. He was also to pay certain debts mentioned in the deed for which the other co-sharers were to be under no liability. The deed was stamped with a five rupees stamp as a release. No landlord's fee was paid as required by S. 12 of the Bengal Tenancy Act.

Held, that the deed was a transfer within the meaning of S. 12 of the Bengal Tenancy Act and the transfer was complete as soon as the document was registered. The non-payment of landlord's fee did not render the transfer invalid owing to the operation of S. 1 of Act 1 of 1903. B. C.

Held, further that the liability of the co-sharers under the lease ceased with the transfer.

Maclean C. J. & Coxe J.

Chintamani Dutta v. Rash Behari, 12 C. W. N. 478.

————S. 50—*Land Acquisition proceeding—Apportionment of compensation between landlord and tenant—Presumption of permanency.* Although S. 50 of the Bengal Tenancy Act does not apply when the question of the permanency or otherwise of a tenure arises in a proceeding for the apportionment between landlord and tenant of money awarded for compulsory purchase of land the principle involved in that section is useful guide to the Courts in deciding it.

Maclean C. J. & Coxe J.

Nunder Lal v. Atarmoni, 12 C. W. N. 432.

————S. 153—*Value of suit—Withdrawal of portion of claim—Transfer of officer specially empowered—Power, if ceases.* Where in a suit for rent the claim originally made exceeded Rs. 5 but when the suit came on for trial the claim was reduced to Rs. 7-8-0 a certain portion of the claim having been withdrawn.

Held, that for the purpose of an appeal under S. 153 of the Bengal Tenancy Act, the amount claimed in the suit should be considered to be less than Rs. 50.

When a Munsif is empowered to exercise final jurisdiction under S. 153 he does not cease to have the power by reason of his transfer from a station.

Maclean C. J. & Coxe J.

S. M. Shilabati v. Mr. M. V. Roderiques, 12 C. W. N. 448.

Burden of proof—Suit for a declaration that an alleged adoption is invalid. Where the plaintiff asks for a declaration that an alleged adoption is invalid, but, cannot claim immediate possession by reason of the intervention of a widow's estate, the burden is still on him to make out a *prima facie* case that the adoption challenged by him is invalid in law or never took place in fact. *Brojo Kishoree Dass v. Sreenath Rose* (9 W. R. 468)

and *Sardar Singh v. Ram Kunwar* (Weekly Notes, 1902, p. 62) followed.

Stanley C. J. & Burkill. J.

Ashrafi Kuar v. Rupehand, 1908, A. W. N. P. 79.

Burma Ferries Act, s. 25—Ferryboat—Meaning of. Employing means to carry betel leaves from one place to another within the limits of a ferry does not make it plying a ferry boat within the meaning of sec. 25 of the Burma Ferries Act.

Ormond J.

Po. U. v. Emp., 14 Bur. L. R. 22.

Burma Municipal Act (3 of 1898) s. 46 (1) (A) ss. 68, 69—Meaning of "Tram Lines—whether" buildings and lands. The street Tram Lines are buildings and lands within the meaning of s. 46 (1) of the Burma Municipal Act and the street lines are in the occupation of the owners of that lines.

Fox C. J. & Irwin & Hartnoll J. J.

Rangoon Electric Co. Ltd. v Rangoon Municipality. 14, Bur. L. R. 26.

Burmese Law—Adoption—Essentials—Proof of— In cases of adoption the publicity of the relationship is the essential point to be established; publicity is explained to be general publicity and notoriety as opposed to a hole and corner matter. Notoriety amongst the people with whom the parties ordinarily mixed in social life is what is required.

Fox C. J. In the case of a child adoption removes the child from the family of its natural parents and deprives it of all rights of inheritance in its natural parent's property. The same must happen in the case of an adult. But an adult cannot be deprived of any rights without his consent; it must appear in the case of an alleged adoption of an adult that he consented to the adoption.

Fox C. J. & Hartnoll J.

Ma Giji v. Maung, 14 Bur. L. L. 15.

Burmese-Budhists—Succession—Division among nieces—Whether percapita or per stirpes. Among Burmese-Budhists the division of estate amongst nieces is to be per stirpes and not percapita. *Fox C. J. & Moore J.*

Ma Myo v. Ma su, 13 Bom. L. R. 374.

C. P. Land Revenue Act 1881—Malikbagurja—Malagajar—Estate of. There is nothing in the Revenue Law of the Central Provinces to prevent the same person from being a malguzar and a malik makbuja in the same mahal.

The distinction of a malik makbuza contained in the Central Provinces Land Revenue Act, 1881, is intended merely to distinguish a malik-makbuza as such, from other kinds of revenue paying proprietors who may be found in a village settled under the Act.

The estate of a malik-makbuza is distinct from, and independent of the estate of a mulguzar in the same mahal, and the possession by one person of both estates does not result in merger.

Mt. Mankoo v. Mt. Kankoo, 4 Nag. L. R. 2.

C. P. Tenancy—*Devolution of—Hindu law—Applicability of.* The devolution of tenancy in the Central Provinces is entirely governed by statute, and the fact that the heir selected is in accordance with the personal law of the tenant in some cases does not make such personal law generally applicable to the tenant estate.

The Hindu law of succession by survivorship and as to the vesting of a son's interest by birth, is not applicable to a tenancy governed by the Central Provincial Tenancy Act.

Ghanga v. Ukund Roy, 4 Nag. L. R. 9.

Chakran land—*Resumption and transfer to zemindar—Recovery of same by putnidar—Suit for specific performance, if necessary.* When Chakran lands were included in the putnai potta granted by the zemindars to the plaintiffs before the resumption thereof under the Chowkidari Act.

Held—That upon resumption and transfer of the lands to the zemindars the remedy of the putnidars was to bring a suit for recovery of possession and not a suit for specific performance of a contract. *Ranjit Singh v. Raddha*, 34 Cal. 364 not followed.

Maclean C J. & Coxe J.

Kumar v. Budhu, 12 C. W. N. 459.

Champerty—*Assignment—Validity, if may be questioned by third parties—Consideration made payable upon success of suit—Gambling in litigation.* In India an agreement cannot be avoided on the ground of Champerty. *Ram Comar v. Chunder*, L. R. 4, I A 23 Cal. 253. *Kunvar Ral Lal v. Nilkanth*, L. R. 20 I. A. 112 and *Lal Achal Ram v. Raja Kazim*, 9 C. W. N. 477 = L. R. 32 I. A. 113, R. 27 All, 271 followed.

The agreement in the case provided that out of the purchase money which was fixed at Rs 52,600, Rs. 600 to be paid down and the balance when the property should be recovered.

Held—That the agreement was generally of a champertous character but it was not void on that account, nor was it opposed to public policy and void as such by reason of the stipulation relating to the payment of consideration.

P. C.

Raja Rai v. Debí Dayal, 12 C. W. N. 393 = 10 Bom. L. R. = 7 Cal.

L. J. 335 = 5 AL L. J.

Civil Procedure Code—*Res judicata*—New Rulings. A ruling of the High Court that in a given case no appeal will lie has not retrospective effect so as to invalidate orders previously passed upon the assumption that in a similar case an appeal did lie.

Where reliance was placed upon two rulings of the High Court as establishing that a suit was barred by the principle of *res judicata*, but these rulings had not been relied on when the suit was before the Court of first appeal or on a previous occasion when it was before the High Court in appeal, it was held that the principle of section 13, explanation II. of the Code of Civil Procedure applied and the rulings could not be looked at.

Aikman & Karamat Husen. J. J.

Abdul Rashid v. Abdul Latif, A. W. N., 1901, 68. = 5. A. L. J. 117.

———**S. 12—Court of the Political Agent, Muscat—Not established by the Governor General of India.** Held, that the Court of the Political Agent, Muscat, having been established by an order of Her Majesty in Council and not by the Governor General of India, the jurisdiction of the British Court was not ousted by a prior suit pending in the Muscat Court, and that section 12, Civil Procedure code, had no application.

Hayward J. C.

Rahimtullah v. Damodhar, Sind. L. C. 166.

———**S. 43—Suit for redemption decreed—Second suit for surplus profits recovered by mortgages during mortgage not maintainable—Effect of Article 105 of the Limitation Act.** Article 105 of the Limitation Act must not be construed so as to conflict with the provisions of S. 43 of the Code of Civil Procedure, and must be deemed to refer to cases in which the mortgagor has got possession of the mortgaged property otherwise than by a suit for redemption. Where a mortgagor brings a suit and obtains a decree for redemption, he cannot maintain a second suit for recovery of surplus collections made by the mortgage, during the period of the mortgage. S. 43 of the Code of Civil Procedure being a bar to the maintenance of that suit.

Per *Karamat Hussain J.*—The right to claim the surplus profits is synchronous with the right to claim possession of the mortgaged property and to hold that the cause of action for claiming excess collections accrues when the mortgage debt has been satisfied, is inconsistent with the principles on which the law of redemption is based.

Aikman & Karamat Hussain J. J.

Ramdin v. Bhup Singh, 5 A. L. J. 192.

———**S. 43—Suit under S. 625 C. P. Code.** S. 43 of the Code of

Civil Procedure has no application to a suit instituted under S. 525 of that Code.

Where an arbitration award or a private contract is merely to the effect that certain property be sold, the vendee who sues for specific performance of the sale, is not compelled by S. 42 of the Specific Relief Act, 1877, to add a prayer for possession, and S. 43 of the Code of Civil Procedure, 1882, will be no bar to a subsequent suit by him against his vendor based on the completed sale. *Narayana v. Kandasami*, 22 Mad. 24 dissented from.

Sheodin v. Mt. Godhi, 4 Nag L. R. 14.

———S. 45—*Misjoinder of action—Suit for partition by co-sharers melvaram—Kudivaramdars parties—Partition suit—Debtors—Parties.* A suit for partition by some of several co-sharers of the melvaram in which the Kudivaramdars also are impleaded with a view to the settlement of the relative rights of the melvaramdars and the Kudivaramdars is bad for misjoinder of causes of action.

Obiter.—A suit for partition impleading the debtors of the family with a view to the determination of the nature and amount of the debts so as to bind the debtors, is bad for misjoinder of causes of action.

Wallis & Sankaran Nair J. J.

Ramkrishna v. Krishna, 18 M. L. J. 85.

———Sec. 103 and 647—*Dismissal for default—Application for revision dismissed for default—application for rehearing—Sufficient cause—Absence of counsel owing to unusual combination of circumstances* An application for revision by a parda-nashin lady was dismissed on default of appearance of both the counsel engaged by her for the case on the date fixed for the hearing. An application for rehearing of the case was made on the ground that the counsel were prevented from appearing by an unusual combination of circumstances. It was objected that the application did not lie, and that there was no sufficient cause for non-appearance of the party at the hearing of the case.

Held, overruling the contention that application lay by virtue of secs. 103 and 647 of the C. P. C. and there was sufficient cause for rehearing of the application for revision. 75 P. R. 1881, dissented from,

Chatterji & Johnstone J. J.

Jiwani v. Bhagat, 9 P. L. R. 85.

———Ss. 108, 157, 158—*Make such other order as it thinks fit—Pleader appearing and asking for adjournment—Refusal to adjourn—Pleader abstaining from the conduct of the case—Whether ex parte.* The

latter part of S. 157 "or make such other orders as it thinks fit" has no application to a case where the Court at once proceeds to trial and judgment.

The mere fact of a pleader appearing for a party and applying for an adjournment does not preclude the conclusion that the party, nevertheless, did not appear within the meaning of S. 157, or Ch. VII, C. P. Code.

Held also, that where the pleader who appeared for a party and asked for an adjournment of the case, on the Court's refusal to adjourn, altogether obtained from taking any part in the examination of the witness or in the argument of the case, the party whom the pleader represented 'failed to appear' within the meaning of S. 157, C. P. Code.

In cases where, on the Court refusing to adjourn a case, a pleader says that he has no instructions, it would be well explicitly to ascertain whether the pleader severs his connection with the case.

Subrahmanya Aiyar C. J. & Benson J.

Ramanuja v. Rangaswami, 18 M. L. J. 51 = 3 M. L. T. 225.

— — — **Ss. 111. 544, 583**—*Set off in restitution—Equitable relief—Accounts taking of—He who seeks equity must do equity.* Defendant took a lease from one Z in 1882. Plaintiff took another lease from Z's successor in 1890. The plaintiff sued the defendant and his lessor's then representative for a declaration that the lease to defendant was invalid and for possession. Plaintiff obtained a decree for possession on condition of his paying a certain amount as compensation to the defendant. The defendant delivered possession on receipt of compensation amount. The representative of the lessor appealed from the decree making the defendant a party. The decrees of the lower Courts were upset by the High Court in August 1897.

Held, that under S. 544, C. P. Code, the reversal of the decree by the High Court enured to the benefit of the defendant also, that the defendant was entitled to demand possession of the lands from the plaintiff by way of restitution; that the refunding of the compensation amount by the defendant was not a condition precedent to his obtaining relief by way of restitution and that the defendant was entitled to ask that the amount may be adjusted by setting off mesne profits, which the plaintiff has wrongfully received against the compensation money, as on the date of the decree of the High Court.

Held, that it was not equitable that the defendant should be permitted in effect to postpone applying for restitution until mesne profits had amounted to a sufficient amount so as to wipe off the amount of the compensation money.

White C. J. & Miller J.

Erat Madhavan v. Venjanat Swarapa, 18 M. L. J. 39.

————S. 136—*Scope of—Discretion—Defence, when to be struck off.* S. 136 of the Code of Civil Procedure is based upon Order 31, Rule 21 of the supreme Courts in England. It renders the defendant liable to have his defence struck out upon failure to answer an interrogatory. It does not make it obligatory upon the Court to strike out the defence under all circumstances whatever. If there is obstinacy or contumacy on the part of the defendants or a wilful attempt to disregard the order of the Court, an order under S. 136 of the Civil Procedure Code is appropriate.

Mookerji & Caspersz J. J.

Bansi v. Palit, 7 C. L. J. 295.

————S. 213—*Practice.* Where there was a hopeless tangle of litigation in a suit as to an estate owing to complicity of litigation, the Chief Court remedied it by consolidating the suits and treating them as inquiries made in pursuance of a decree in an administration suit in which accounts had been settled.

Fox C. J. & Hartnoll J.

————S. 234—*Hindu Law—Decree debt—Sons brought on record as representatives of deceased father—Pending suit—Decree, form of.* Where the sons of a Hindu father are brought on the record in a pending suit against the father as his legal representatives, the decree to be passed as against them should only be in their representative capacity, i. e. that the amount of the decree should be recovered from them only from the estate of the deceased father in their hands.

White C. J. & Sankaran Nair J.

Periasami v. Seetharama, 18 M. L. J. 36.

————S. 244—*Auction purchaser—Representative of the Judgment debtor.* A purchased certain property in execution of a mortgage-decree passed against B. Subsequent to A's purchase C obtained a decree against B on another mortgage deed executed by B in respect of the same property, and in execution proceedings joined A as the representative of B.

Held, that A, the auction purchaser, was a representative of judgment-debtor within the meaning of section 244, Civil Procedure Code, and had been rightly joined.

Lucas & Hayward J. C.

Gokalsing v. Awatmal 1 Sind L. R. 158.

————S. 244—*Applicability of—property sold separately in two decrees—Suit between two auction purchasers—Puisne mortgagee—Right to redeem.* A mortgaged his property to B, and thereafter to C. C obtained a mortgage decree against A without impleading B, C purchased the same at the Court auction and got possession thereof. B thereafter obtained a decree on his mortgage and in execution thereof purchased it himself. B then brought

suit against C, claiming that C should either give possession of the property to him or else redeem him.

(2) C being a paise mortgagee, his only right was to redeem the plaintiff on payment of the mortgage money, he was in no way concerned with the price paid by B at the Court auction. *Pratt & Hayward. J. C.*

Thakurdas v. Gangaram. 1 Sind. L. R. 172.

—S. 244—*Claim for damages by auction purchaser against judgment-debtor and others for injury done to property purchased after affirmation of sale, not a question relating to execution within section 244*) Where after confirmation of a sale of property in execution at a Court-auction and before delivery of possession to the auction purchaser, the judgment-debtor and others not parties to the decree trespass upon such property and cause injury to it, the claim of such auction purchaser for damages in respect of such injury, is not a 'question relating to the execution of the decree' within the meaning of S. 244 of the C. P. Code and must be enforced by separate suit and not in execution proceedings. *Obiter:* Even supposing that such a claim was one relating to execution, the auction purchaser is entitled but not bound to implead all the wrongdoers in one suit and ought not to be compelled to proceed against the judgment-debtor under section 244 and against those not parties by a separate suit. *Miller. J.*

Kolintavita Mama Amma v. Kolintavita Haji Kandi. 31 Mad., 37.

—Sections 244, 278, 283—*Party claiming attached property in his character as trustee — Appeal — Wakf—Decree directing sale of Wakf property.* Section 244 has no application to a case where the judgment-debtor or his representative asserts in execution that he holds the property attached in trust for some third person or body of persons or religious charity or institution. The claim must be investigated under sec. 278, 283 C. P. C and the order passed therein cannot be challenged by an appeal, but must form the subject of a separate suit.

A decree obtaining the sale of wakf property may in certain circumstances be perfectly valid. *Boddam & Munro J. J.*

Badrudin Sahib v. Abdul Rahim, 18 M. L. J. 21.

—Sec. 244—*Representative, who is—Beneficial owner.* A person for whom the predecessor of the judgment-debtors was the *benami-dar* and who is therefore really interested in protecting the property, is a representative of the judgment-debtors within the meaning of s. 244 of the C. P. Code. *Mitra & Casperiz J. J.*

Shibkumar v. Maidhur, 7 C. L. J. 299.

—————**Secs. 258, 244**—*Satisfaction of decree-holder's fraud—application after time to have certified.* Sec 258 of the Civil Procedure Code prevents an executing court from taking cognizance of an uncertified adjustment of a decree. *Dinobandhu v. Harimuti*, 8 C. W. N. 395; 31 Cal. 480 explained. *Ram Dayal v. Ram Hari*, 23 Cal. 32 (1892) and *Bairgula v. Bapanna*, 25 Mad. 302. followed.

Where, however the judgment-debtors complained that the decree-holder had by fraud kept them in ignorance, till within a month of their application, of the fact that the satisfaction of the decrees had not been certified.

Held—That the matter could not be investigated under sec 244 of the Civil Procedure Code.

Rampini & Sharfuddin J. J.

Gadadhar v. Shyam Churu, 12 C. W. N. 485.

—————**Sec. 276**—*Alienation before attachment order served—validity of.* Where a judgment creditor applied for attachment of certain property, and before the attachment order was served on the judgment-debtor, the judgment-debtor alienated the same to the plaintiff; *held* that all the conditions prescribed by section 276, Civil Procedure Code, not having been complied with, the alienation was not void as against the auction purchaser.

Pratt & Crouch J. C.

Totomal v. Raising, 1 Sind L. R. 176.

—————**S. 281**,—*Order under—Binding on whom.* An order passed under S. 281, C. P. Code, is not conclusive against the judgment debtor unless he is a party to the proceedings in which the order was passed.

An order under S. 281, C. P. Code cannot be taken advantage of by a person who was not a party to the proceedings. *White C. J. & Wallis J.*

Vadappalle v. Drenamraja, 18 M. L. J. 26.

—————**S. 294**—*Decree—Execution—Auction sale—Decree-holder bidding for property with permission of Court—Right to set off.* The first paragraph of S. 294 of the Civil Procedure Code requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which permission to bid is granted that there should not be this right of set off; in such case, no set off can be allowed.

Jenkins C. J. & Batchelor J.

Hazarimal v. Namdu, 10 Bom. L. R. 296.

—————**S. 310 A**.—*Application to set aside rent sale—Bengal Tenan-*

by Amendment Act of 1907, S. 54—Right accrued previous to but application after repeal. A raiyati holding having been sold on 7th May 1907 in execution of a rent decree, an under raiyat applied to have the sale set aside under S. 310 A. C. P. Code, on 23rd May.

Held, that the application could not be entertained, the Bengal Tenancy Amendment Act having come into operation on the 22nd May 1907. S. 54 of the Amending Act by enacting that S. 310 A. C. P. Code shall not apply to a tenure or holding attached in execution of a decree for arrears ~~due~~ thereon does not repeal any portion of the Bengal Tenancy Act within the meaning of sub-section (c) of S. 8 of the Bengal General Clauses Act.

Maclean C. J. & Coxe J.

Asiruddi v. Mukodamoyee, 12 C. W. N. 434.

———**Ss. 351, 352—Insolvency Proceedings—Schedule not framed—Suit by creditor not barred.** Where in the insolvency proceedings no schedule was framed under S. 352 of the C P. Code

Held, that a suit by a creditor whose debt was acknowledged by the debtor in the list of debts filed by him with his application for insolvency was not barred—7 Mad. 318 followed. 76 P. R. 1899 distinguished.

Kensington & Lalchand J. J.

Harya v. Mulchand, 9 P. L. R. 250.

———**S. 373—Withdrawal of suit—Liability to file fresh suit—Permission of the Court—Costs.** S. 373 of the Civil Procedure Code, 1882, contemplates a withdrawal not of the suit but from the suit, and such withdrawal may be either with or without liberty to bring a fresh suit. If a party desires to withdraw from the suit with such liberty, then he must apply to the Court to permit him as to withdraw. If he does not desire to have that liberty, then he can withdraw of his own motion and no order of the Court is necessary.

Hence, where a plaintiff applies to the Court for permission to withdraw from the suit with liberty to bring a fresh suit and the Court is not minded to give the liberty, the proper order to pass is that the application for permission to withdraw from the suit with liberty to bring a fresh suit for the subject matter of the suit be dismissed with costs. It is not competent to the Court to order on such application that the suit may be withdrawn and the plaintiff to bear all costs and to pay all costs.

Jenkins C. J. & Batchelor J.

Mahant v. Parshotam Das, 10 Bom. L. R. 293.

———**Ss. 380, 410—Pauper—Suit by security for costs.** No se-

curity for costs ought to be demanded from a person who has been allowed to sue as a pauper. S. 380 of the C. P. Code does not apply to the case of a person who has been allowed to sue as a pauper under S. 410 of the Civil Procedure Code.

Brett & Holmwood J. J.

Musammal v. Abdul, 7 C. L. J. 312.

————S. 396—*Final decree—No application necessary—a Court competent to act Suo motu—Partition by metes and bounds—Lands not paying revenue to Government.* A suit for partition of lands not paying revenue to Government is to be considered pending on the file of the Court until there has been an actual division by metes and bounds under S. 396, C. P. Code, and a final decree as contemplated by S. 336 is passed. The Court is competent to pass the final decree for partition under S. 396, C. P. Code, *suo motu* without an application by the parties for the purpose.

Wallis & Sankaran Iyer J. J.

Togaram Appare v. Togaram Venkata, 18 M. L. J. 23

————S. 491—*Attachment before judgment of immovable property by Small Cause Court—Claim for compensation for improper attachment—Small Cause Court.* The Small Cause Court is prohibited not only from ordering attachment of immoveable property but also from determining the question of compensation in case an attachment is ordered by mistake.

Lalchand J.

Baru Mal v. Munir, 9 P. L. R. 80.

————S. 520—*All matters in difference in the suit—Arbitrations jurisdiction—Making out a new contract for parties.* Plaintiffs were the three surviving sons of one J, defendant No. 2 was his widow, defendant No. 3 the fourth son, and defendant No. 1 an alienee from the widow. Plaintiffs sued for a declaration that the alienee got no more than the life estate of the widow, and for such other and further relief as the Court deemed fit. The matters in difference in the suit were referred to arbitration through the Court. The arbitrators passed an award declaring the sale in favour of defendant No. 1 valid absolute and binding on the plaintiffs, and ordered him to pay Rs. 1,500 to the plaintiffs, in view of their claim.

Held, that the arbitrators had exceeded their jurisdiction, which was confined to matters in dispute in the suit. The words "such other and further relief" though wide cannot be held to include a request to create an obligation which is not alleged to exist, and to compel defendant No. 1 to buy up plaintiff's rights.

Crouch J. C.

Tikamdas v. Phatunal, 1 Sind. L. R. 210.

———S. 525, 462—*Minor represented by duly appointed guardian sanction when necessary—Mahomedan Female—Guardian of Minor—Power—Pleadings—Fraud.* Held, (1) A Mahomedan mother is not the legal guardian of the estate of her minor child and cannot, therefore, either alienate his property or pass a valid reference to arbitration in respect of disputes relating to his property.

(2) But when she represents the minor as a duly appointed guardian *ad litem* in proceedings under section 525, Civil Procedure Code, and a decree is passed in terms of an award, the minor is bound by the award, unless good cause is shown for setting aside the award:

(3) such a decree is not a nullity on the ground that previous sanction of the Court was not obtained under section 462, Civil Procedure Code, which applies only to an agreement or compromise entered into by the next friend or guardian *ad litem* of a minor;

(4) But when the guardian *ad litem* is actually a party to the application under section 525, Civil Procedure Code, that is party to an agreement that no objections will be filed on either side, then in order to make the decree effectual against the minor, sanction under section 462, Civil Procedure Code becomes essential, and where such sanction has not been obtained the Court has power to set aside the decree so far as the minor is concerned.

Lucas & Crouch J. C.

Mir Mian v. Musamat Haji Khan, 1 Sind L. R. 160.

———S. 525, 526,—*Award destroyed after presentation in Court—Parties referred to regular suit—legality of—*Where an application had been made under section 525, Civil Procedure Code to file an award, and during the pendency of the arbitration proceedings the records of the Court including the award in question were destroyed by fire, held that the Court could not refuse to file the award under section 526 and refer the parties to a regular suit, as the mere fact of the award being destroyed did not necessarily show that the investigation will be either long or difficult. The Court should decide the objections on such evidence as is available.

Hayward & Crouch J. C.

Lekhraj Khubchand v. Khubchand, 1 Sind. L. R. 167

———S. 539—*Permissive not mandatory—Pre-existing right of suit not taken away—Questions relating to jurisdiction—Waiver.* Without obtaining a certificate from the Advocate General as required by S. 539, Civil Procedure Code, the plaintiff sued defendant for a declaration that certain property was a "tikana" (place of worship) and for an injunction restraining her from using it as a dwelling house.

Held, that (1) Statutes imposing restrictions upon the subject's right of suit, must be construed strictly.

(2) The words of S. 539, Civil Procedure Code, being merely permissive or directory and not mandatory, a pre-existing right of suit cannot, therefore be held to have been taken away by this enactment.

(3) As under the Hindu Law the plaintiff being a member of the community interested in the "tikana," could maintain the suit, no certificate of the Advocate General was necessary.

(4) The questions as to right of suit, and bar of S. 539, Civil Procedure Code relate to jurisdiction, and can be raised in appeal even though waived in the Lower Court

Pratt & Hayward J. C.

Mussamat Radhibai v. Kundamal, 1 Sind L. R. 155.

———**S. 539**—*Right of villagers to remove Mahant of a religious institution.* Where the villagers of a place where there was a religious institution had not obtained sanction as required by s. 539 C. P. Code and had failed to prove that they had a customary right to remove the Mahant of the institution, the application of the villagers to remove the Mahant was refused.

Robertson & Kensington J. J.

Bhagwandas v. Hardit Singh, 9 P. L. R. 21.

———**Sec 549**—*Appeal—Order rejecting application for rehearing of appeal dismissed under sec. 549.* No appeal lies against an order refusing to re-admit an appeal rejected on the ground of the failure of the appellant to furnish security for the costs of the respondent under sec. 549 of the Code of Civil Procedure, *Lakha v. Bhauna*, 18 All. 101 referred to.

Aikman & Karamat Husain J. J.

Firoz v. Addul Latif, 3 M. L. T. 222

———**Sec. 561**—*Supporting decrees of lower court on a point decided against a party.* A party not objecting to the decree of the lower court can under s. 561 of the C. P. Code, support that decree on any ground even on that decided against him the lower court.

Fox C. J. & Moore J.

Ma Mayoo v. Ma Su, 13 Bur. L. R. 374.

———**Secs. 562 and 595**—*Remand—Privy Council—Appeal to.* *Held*, that no appeal lies to the Privy Council against an order of remand under s. 562 of the C. P. C., for the order is not a final decree within the meaning of sec. 595 of the Code.

Johnstone & Rattigan J. J.

Sohn v. Jahrudul, 9 P. L. R. 89.

—**S. 568**—*Powers of Appellate Court to take further evidence.* Held following the Privy Council rulings in *Kesariji v. G. I. P. Ry. Co.* 32 Bom. that the legitimate occasion for s. 568 is where on examining the evidence as it stands, some inherent lacuna or defect becomes apparent. *Moore J.*

Maung Kala v. Ma Sin, 13 Bur. L. R. 385.

—**S. 574**—*Judgment not in accordance with the section—Appeal—Practice—Procedure.* Where there has been a failure by the Appellate Court to comply with the requirements of Sec 574. C. P. C., the proper form of the order to be made by the second Appellate Court is to remand it for disposal according to law. If the Judge of the first Appellate Court happens to be the same individual who heard the appeal originally, he need rehear the appeal, only if he is of opinion that he cannot properly dispose of it without a rehearing; and where he is not the person who originally heard the appeal he should always rehear it. *F. B.*

Sarvana v. T. Sessa, 18 M. L. J. 34.

—**Sec. 578**—*Irregularity—Causes of action—Misjoinder of—Same tortious Act—Separate damages.* Held, (1) In England several persons can join under certain circumstances as co-plaintiffs in one suit in respect of different causes of action, but under the Civil Procedure Code they can do so only in respect of the same cause of action.

(2) The misjoinder of different causes of action is not a mere irregularity which can be cured under section 578, Civil Procedure Code, as the Court has no jurisdiction to try the suit till it has been instituted in the manner allowed by law.

(3) Where damage is caused to two members of a firm by the same tortious act of the defendant, each of them has a separate cause of action in respect of the damage caused to him, as also a joint cause of action in respect of damage caused to the firm, and when they wish to vindicate their individual rights they cannot join as co-plaintiffs in the same suit

Crouch & Hayward J. C

Manghanmal v. Michbumal Revachand, 1 Sind L. R. 181.

—**Sec. 652**—*High Court Rules, 17 18 and 25—Limitation Act, sec. 12—Presentation of memoranda of appeals, application and appeals in execution proceedings—Accompaniments extraneous.* The accompaniments directed under Rule 25 of the Bombay High Court Rules are extraneous to the memoranda of appeals, applications and appeals in execution and the rule expressly does not fix any time at which the documents men-

tioned in clauses (2) and (3) are to accompany the memoranda, etc. An appeal, etc., if presented in time, is validly presented for the purposes of the Limitation Act, if it is accompanied by the copies required by the Civil Procedure Code.

Per Chandavarkao J.—No rule of the High Court can add to or modify the conditions and limitations laid down in the Limitation Act. It is true that the Court has the power of making certain rules given by section 652 of the Civil Procedure Code and those rules must be "consistent with" the Code. But there is no power to frame a rule modifying any rule or mode as to computation of limitation prescribed, expressly or by necessary implication, in the Limitation Act F. B.

Chunilal v. Dahyabhai Amulakh, 32 Bom. 14.

Contract Act—Partnership—Dormant partner—Partner contracting on behalf of himself and adormant partner cannot sue the contracting party after the death of the partner entering into the contract. If one partner enters into a contract in his own name, still, if he is acting as the agent of the firm, his co-partners will be in the position of undisclosed principals. They can be sued on the contract and may join as plaintiffs in suing.

A railway company entered into contracts with a person in the belief that he was the person interested in them, but he had a partner unknown to the Company. After sometime the person who contracted with the Company died, and the dormant partner claimed payment of the amount due to the firm under one of the contracts. The Company refused to pay except on a joint receipt of the plaintiff and the administrators of the deceased. The dormant partner brought a suit to recover the amount.

Held, that the Company having contracted with the deceased partner alone, the right to claim performance rested with him during his life time and he could have sued on the contract alone; and that the dormant partner might have joined his co-partner in suing but he could not sue the Company alone.

Macleod J.

Ali Miyan v. B. B. and C. I. Ry. Co., 10 Bom. L. R 306.

———**S. 16—Undue influence—Urgent need of money—Loan borrowed by a person in urgent need of money—Promise to pay a time barred debt—Unfair and unconscionable bargains—Fraud—Coercion—Equity.** The defendant, a karkun in the Government service, being heavily indebted and being very much harassed by his creditors, applied to the plaintiff for a loan on a mortgage. The plaintiff agreed to lend provided the defendant executed a *khata* for the payment of Rs. 807-4-0, originally due by the latter's father

but which in 1894 had been held to be time-barred in a suit brought by the plaintiff, and also for the payment of Rs. 25, the costs of that suit. The defendant accordingly on the 16th September 1895 passed a *khata* for Rs. 332-4-0 for the amount due under which the defendant finally passed promissory note for Rs. 600 on the 27th August 1901. Upon the promissory note the present suit was brought. The Subordinate Judge held that the defendant received from the plaintiff only Rs. 28 on the 16th September 1895 of which Rs. 10 had been repaid, and passed a decree for Rs. 36 (*viz.*, Rs. 18, the amount of principal, and Rs. 18 as interest). On appeal, the District Judge varied the decree by allowing plaintiff's claim to the further extent of Rs. 307-4-0; and disallowed the rest of the claim on the ground that it was vitiated by undue influence which the plaintiff exercised over the defendant. On appeal:-

Held, that the plaintiff's claim ought to be allowed in full. If, according to law, a promise to pay a debt barred under the Statute of Limitations is valid and is supported on the principle that in so promising the debtor is doing what every honest man, morally speaking ought to do and would do the same principle ought equally to apply to a further promise to pay the said debt with interest, because interest is only accessory to the principal, and is paid to the creditor because the latter has been deprived of the use of his money and the debtor has had the benefit of it.

Under section 16, clause 1, of the Indian Contract Act (IX of 1872), when two persons enter into a contract, first, there must be subsisting between them some relation of the kind described in the section and secondly, the dominating position arising out of that relation must have been used by the party holding that position to secure an *unfair* advantage over the other party.

When a man who is in urgent need of money on account of his poverty and pecuniary difficulties asks for a loan from another, that other is in one sense in a position to dominate the will of the former by proposing his own terms and getting the borrower to agree to them. The borrower's necessity is in such cases the measure of the terms agreed to. That is a feature of every contract of money-lending, where the borrower is a man without credit and the lender is exposing his money to considerable risk. But that is not the vague kind of relation and domination contemplated by the plain terms of clause 1 of section 16 of the Indian Contract Act.

There are well-known relations such as those of guardian and ward, father and son, patient and medical adviser, solicitor and client, trustee and *cuius que trust* and the like which plainly fall within clause 1 of the section no such specific relations exist and the parties are at arm's length, being strangers, undue influence may be exerted, but its existence must be proved by

evidence; and in such cases, the nature of the benefit or the age, capacity, or health of the party on whom the undue influence is alleged to have been exerted are of great importance. In short, the test is, confidence reposed by one party and betrayed by the other, which means that there must be an element of fraud or coercion, under either of which the acts constituting undue influence must range themselves.

The expression "unfair advantage" in clause 1 of section 16 of the Indian Contract Act is used as meaning an advantage obtained by unrighteous means.

A Court of Equity will not set aside a contract, merely because it flows from moral, not legal, obligations, unless it was proved that the defendant was forced, tricked or misled into it by the plaintiff by means of fraud, using that word not merely in the restricted sense of actual deceit, but in the larger sense of an unconscientious use of power arising out of certain circumstances and conditions, and showing that the defendant having been victimised by the plaintiff's unfair and improper conduct was unable to understand what he was doing.

Chandavarkar & Knight J. J.

Ganesh v. Vishnu. 32 Bom. 37.

———**S. 69, 70**—*Money paid for income-tax by the person assessed and on whom demand is made cannot under these sections be recovered from a person who is alleged to be the party really liable to pay.* When the income-tax authorities assess a person in respect of certain income alleged to be derived by him and recover the tax so assessed from him such person cannot, under section 69 or section 69 or section 70 of the Contract Act, recover the amount so paid from another person on the ground that such other was in actual receipt of the income. Section 69 cannot apply, as the latter person, not being assessed was not legally bound to pay the tax and section 70 cannot apply as the person paying the tax did so on his own account and not on behalf of another.

Wallis v. Miller J. J.

Raghavan v. Alamelu Ammal. 31 Mad., 35.

———**Ss. 69, 70.**—*Fiction assignee of judgment-debtor—Right to make payment.* In order to get the benefit of S 69 of the Contract Act the party making a payment on behalf of another before he can recover the amount so paid must show that he had an interest in making the payment. *Ram Tahal*, L. R. 2, I. A. 13 and *Chedi Lal*, 11 All. 234 followed.

A fictitious assignee of mortgagee rights from a judgment-debtor has not such an interest in discharging a debt as would give him the benefit of Ss. 69, 70 of the Contract Act

Stanley C. J. & Burkill J.

Janki Prasad v. Baldeo, 5 A. L. J. 163.

Court Fees Act, S. 7, Clauses 5, IX (e)—*Suit against landlord and the persons claiming under him by lessee of melvaram rights falls under S. 7, cl. 5 and not under cl. 11 (e).* A suit by the lessee of melvaram right to recover possession from his landlord and others claiming through the landlord falls within S. 7, clause 5 of the Court Fees Act, as a suit for possession of land. Such a suit does not fall within section 7, clause 11 (e), as clause 11 applies to suits between tenant and landlord only, and the wording of clause 11 (e) makes it applicable only to persons in actual physical occupation and not to persons having the melvaram rights only. *Furzand Ali v. Mahant Lal Puri*, 32 Calc. 268, followed. Benson J.

Palaniappa Chetti v. Sithravelu Servai, 31 Mad, 14.

Custom-Succession—*Sister not entitled to succeed as daughter of father of deceased.* When a proprietor following the customary law dies leaving a sister she can not claim to succeed the land left by him as daughter of his father; she may succeed as sister only when custom recognizes her right as such. (F. B.)

Hamira v. Ram Singh, 9 P. L. R. No. 74.

———**Inheritance—Daughter—Collaterals of the 7th degree not entitled in presence of daughter**—*Chohan Rajputs of Kharman, Tahsil of Jagadhri, Amballa District*—*Onus probandi to prove exclusion of daughter.* Held, that a mere declaratory suit is maintainable where the property in dispute is in actual possession of the mortgagees and tenants while the mutation entry in favour of one party and that of girdawari in favour of the defendant is unable to prove his possession by affirmative evidence.

Held, also that there is no general rule of Customary Law, that, regardless of tribe and creed; daughter is excluded from succession by her father's collaterals however distant and remote and that collaterals related to her father in the 7th degree are bound to establish that they have right to succeed to his estate in preference to his daughter.

Rattigan & Lalchand J. J.

Abdul Karim v. Sahib Jan, 3 P. W. R. 123=9 Pun L. R. No. 99.

———**Alienation by a sonless proprietor—Daughters—Remote collaterals**—*Rattal Jats of Jutst village, Lahore District.* Held, that according to custom prevailing among Rattal Jats of Jallo village, Lahore District, collaterals related in the eighth degree to a sonless proprietor were not entitled to object to an alienation of ancestral land made by the proprietor in favour of his daughters.

Chatterji & Robertson J. J.

Rajo v. Karan, 9 P. L. R. 264.

Declaratory decree—Discretion. Relief by way of a declaration is purely a discretionary relief. Where the reversioner who sued for it did not offer to pay the debt binding upon the reversion, the court refused to grant the declaration.

Boddam & Munro J. J.

Gauri v. Tirwinaya, 18 M. L. J. 17.

Deed—Construction of—Maintenance deed—“Putra pantradi santan” meaning of—Intention. In construing a deed, the question is not what the parties to a deed may have intended to do by entering into the deed, but what is the meaning of the words used in that deed.

The words “*putra pantradi santan*” (sons, grandsons and the like issue) have a definite and well-ascertained meaning and mean all the heirs, male and female, through the two heirs expressly mentioned are the first two of the male heirs.

In a deed of maintenance, the grantor used the following words: “Upon your death, your sons, guardians and the like issue, that is your male successors in the descending line shall continue to get the same.”

Held, that the words “your male successors in the descending line” are not explanatory, but are used in a restrictive sense to exclude female heirs.

Held, on a construction of the deed that upon the death of the wife leaving a daughter, no right to the maintenance allowance accrued to the husband.

Stephen & Mookerjee J. J.

Keshori v. Shib, 7 Cal. L. J. 291.

Dekhan Agriculturists' Relief Act (XVII of 1879), S. 15 (b).—Decree on mortgage—Direction to pay interest—Application to cancel direction. A decree on a mortgage was passed by the First Class Subordinate Judge of Thana. The decree contained a direction for the payment of interest. After the decree was passed the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) was made applicable to the Thana District. Subsequently in an execution proceeding under the decree, the judgment-debtor, who was found to be an agriculturist, contended that the direction for the payment of interest in the decree should be cancelled under the provisions of the Dekkhan Agriculturists' Relief Act, S. 15 (b).

Held, that the section 15 (b) does not empower the Court to cancel a direction for payment of interest contained in a decree. The interest is as much payable under the decree as the principal, and the section does not say that the Court may direct that any amount payable under the decree shall not be payable. It merely empowers the Court to modify, in the particular manner there described, the terms of the payment.

Jenkins C. J. & Heaton J.

Gokaldas v. Govind, 32 Bom. 98.

Estoppel.—*Against minors.* Estoppel cannot be pleaded against a minor.
Mitra & Caspersz J. J.

Sarat v. Rajoni, 12 C. W. N. 481.

Evidence.—*Judgments—Preemption—Custom.* Judgments in suits for preemption passed on the admissions of vendees are relevant when custom of preemption is in question.
Chatterji & Rattigan J. J.

Than Singh v. Tara Singh, 9 P. L. R. No. 69.

—**Act S. 35.**—*Payathings whether evidence.* When a *thugyi* or revenue surveyor is examined, he may be asked to prove that he made entries in the ordinary course of his duty in revenue register IX and that those entries may be put in evidence, under S. 35 of the Evidence Act provided that the entry is a statement of fact in issue or relevant fact; if the purport of the entry be that the defendant reported that he had given the land to the plaintiff, then the *thugyi* who wrote the entry can prove it at the instance of the plaintiff, but if the purport of the entry that the plaintiff came and said that defendant had given the land to him the entry is not admissible on behalf of the plaintiff.
Irwin J.

Moung v. Ma Shwe, 14 Bur. L. R. 30.

—**S. 91.**—*Promissory note—Loss of proof of contents.* Where a plaintiff bases his cause of action on a promissory note which he alleges had been lost, he cannot prove the contents, unless he succeeds in proving the loss of the document apart from the note in which the contract was recorded. 28 All. 298 distinguished.
Aikman J.

Siraj Husein v. Bulaki Ram, 5 A L. J. 162.

Execution of—Decree—Declaratory of future rights—Effect of—Relief in execution proceedings. Where in a suit for restitution of conjugal rights, decree was passed in terms of an award which not only declared the right of the husband to the restitution but also made provision for the future residence and maintenance of the wife and the manner in which and the occasion on which she was to enforce the same; held that the decree so far as related to the right of residence and maintenance, was merely declaratory and not executory, and no relief could be granted to her in execution proceedings.
Pratt & Hayward J. C.

Musamat Lachibai v. Kaniomal, 1 Sind. L. R. 184.

Fraud—Pleadings, statements in particulars should be given—Issue on fraud—Practice. Where fraud is set up, particulars of it must be given and it must be based upon a specification of the acts relied upon as con-

tituting fraud. Where no such particulars are given in the plaint, the Court must require the plaintiff to amend his plaint by specifying the fraud alleged and in case of failure by him to amend, the Court should refuse to enter into the question.

It is desirable to impress upon Subordinate Judges the supreme importance and necessity of insisting that a case of fraud shall not be the subject of a mere vague allegation in the plaint or written statement; but that it shall be supported by particulars; and that if that condition is not complied with, the party relying on a case of fraud shall not be allowed to raise that case in the form of an issue. It is advisable, indeed, when framing an issue on the point of fraud, to set forth in the issue itself a brief statement of the fraud alleged, or at least to refer to the passage in the pleadings where it is specified.

Chandavarkar & Knight J. J.

Balaji Raoji v. Gangadhar, 10 Bom. L. R. 276.

Guardianship—Appointment of—Joint Hindu family—Minor co-parceners—Guardianship cases when one of the member attains majority. Where a joint Hindu Family consists of co-parceners who are all minors, the co-parceners forming one group, the Court has jurisdiction to appoint a guardian of the property for that group as a whole. But when subsequently one of that group arrives at the age of majority the guardianship of the person so appointed by the Court must cease, and the Court is bound to hand over the joint family property to the co-parcener who has become an adult, although the other co-parceners are minors.

Virupakshappa v. Nilgangawa, 19 Bom. 309. F. B. applied. *Bindaji v. Mathurabai*, 30 Bom. 155; followed.

Chandavarkar & Knight J. J.

Ramchandra v. Krishnarao, 10 Bom. L. R. 279.

Guardian—Liability of—For profits of property in the hands of a stranger. The liability of the guardian extends to profits actually received but for gross and wilful default. He is not liable for the profits of property in the wrongful possession of a stranger.

Mitra & Casperaz J. J.

Sarat Chandra v. Rajoni, 12 C. W. N. 481.

Guardians and Wards Act (VIII of 1890) S. 17—Appointment of—Hindu Law. According to Hindu Law in the case of minors who have lost both parents the nearest male kinsman should be appointed their guardian, the paternal kinsmen having the preference over the maternal.

The interest, well being, and happiness of the minors ought to be the main and paramount consideration for the Court in selecting the guardian of the person of a minor.

Davar J.

Re Gulbai, 32 Bom. 50.

Hindu Law.—Adoption—Jains—Custom—Adoption of married man—Suit for declaration of invalidity of adoption—Burden of proof. *Ibid.*, that according to the law and custom prevailing amongst the Jain community a widow has power to adopt a son to her deceased husband without any special authority to that effect, and if there are two widows the senior widow may adopt without the concurrence of the junior widow. A widow is also competent, with the consent of the *sapindas*, to give a son in adoption after the death of her husband. *Stanley C. J. & Burkitt J.*

Ashrafi Kumar v. Rupchand, 1908, A. W. N. 79 = 5 A. L. J.

———**Adoption—Jain.** Married man's adoption being amongst the Jains a purely secular institution, there is no legal objection to the adoption of a married man. *Manohar Lal v. Banarsi Das*, 29 All. 495 followed. *Chitay Lall v. Chunno Lall*, L. R., 6 I. A., 15.

Stanley C. J. & Burkitt J.

Ashrafi Kumar v. Rupchand, A. W. N., 1908. p. 79. = 5 A. L. J.

———**Debt—Mitakshara—Mayukha—Marriage—Samskara—Marriage of a coparcener—Family purpose.** According to Hindu law a debt contracted for the marriage of a coparcener in a joint Hindu family is binding on the other coparcener as a debt contracted for a family purpose, and, therefore, for the benefit of the family.

Govindarasulu Narainham v. Devarabhotla Venkatanarasayya 27 Mad. 206, dissented from.

Under the Mitakshara as well as the Mayukha the word "Samskara" ordinarily includes marriage. *Chandavarkar & Knight J. J.*

Sundrabai v. Shivnarayana, 32 Bom. 81.

———**Debts—Liability of sons to pay father's debts—Tort committed by father—Decree for damages against the father—Son cannot be held liable under the decree, when the estate be inherited from his father has derived no benefit by the act** Under Hindu Law, the son is not to be held liable for debts which the father ought not, as a decent and a respectable man, to have incurred. He is answerable for the debts legitimately incurred by his father, not for those attributable to his failings, follies or caprices.

Hence, where the father's act in obstructing the passage of water to another's land though not illegal in the usual sense of the term but is wrongful, and that other obtains a decree against the father for the damage done the son cannot be held answerable for the liability so incurred when the

estate that has come to his hands has derived no benefit from the Act.

Chandavarkar & Knight J. J.

Durbar v. Khachar, 10 Bom. L. R. 297.

—————**Guardian—Step-mother—Remarriage** by. A Hindu step mother may be the guardian of her step-son, and an alienation by her of the step-son's estate will bind him, if it is justified by necessity or is for his benefit.

A Hindu mother who is a son's guardian does not by the mere act of remarriage forfeit her position as guardian.

Jago v. Oodol, 4 Nag. L. R. 20.

—————**Inheritance—Mother inheriting to her son takes a limited estate—Funeral ceremonies of mother.** Under the Hindu law applicable in Bombay a mother succeeding as heir to her son takes a limited estate.

Chandavarkar & Heaton J. J.

Vrijbhukandas v. Bai Parvati. 32 Bom. 26.

—————**Inheritance—Funeral ceremonies of mother—Son's religious duty to perform them—Their expenses are charge upon the son's estate—Mitakshara—Interpretation.** The duty of performing the funeral ceremonies of a mother, that is *pindadana* or offering the funeral oblations is laid down as a religious injunction binding on her son in absolute terms by the Hindu law. The duty is independent of any assets left by her. The expenses of performing the funeral ceremonies are, therefore, a charge on the son's estate.

According to Vijnaneshwara, where an act is directed to be done and the omission to do it is stated to be sinful, the direction imposes upon the person directed an imperative and absolute obligation to do the act.

V., a Hindu, died leaving him surviving his mother B., who succeeded to his property. B. made a will in favour of her daughter's daughter P., who succeeded to the property on her death and performed her funeral ceremonies. The plaintiff, a reversionary heir of V., alleging that B. took only a life-interest in the property, sued to recover its possession.

Held, that the plaintiff was entitled to recover the possession of V.'s property as V.'s heir, only on condition of fulfilling the obligation binding the estate, viz., of compensating P. for the expenses she had incurred in performing the funeral ceremonies of B. *Chandavarkar & Heaton. J. J.*

Vrijbhukandas v. Bai Parvati, 32 Bom. 26.

—————**Inheritance—Disqualification—Heirs Complicity in mur-**

der of deceased man—Quantum of proof—Onus—Acquittal in Criminal Court, how far proof of innocence—Unchastity of mother no test—Raghunandana, no binding authority in Southern India. A person who is guilty of the murder of another cannot succeed to the estate of the murdered man.

The acquittal of the person claiming to be the heir of the last owner on a charge of having abated his murder by a Principal Court is no answer to a civil suit by the next heir claiming to succeed in preference to the defendant (the acquitted person) on the ground that the defendant had disqualified herself from inheriting to the deceased's estate by reason of her complicity in the crime. But the defendant's complicity should be proved by clear satisfactory evidence in order that she may be excluded.

Unchastity is not a ground for excluding any female heir except a widow from inheritance.

A mother's claim to inherit the property of the deceased son rests on consanguinity and not on religious merit. Neither degradation nor aggravated unchastity (i. e. intercourse by a Hindu woman with a Mahomedan) effects the proprietary rights of the degraded or unchaste person.

Wallis & Sankaran Nair J. J.

Vedammat v. Vednaya, 18 M. L. J. 70.

———**Joint Hindu family**,—*right of a member of, to represent other members of the family—Suit for recovery of the whole of the family property by one member.* Held, that a member of a joint Hindu family could not insist upon representing the members in a suit brought for recovery of the property belonging to the whole family.

Chamier & Griffin J. J.

Babu Bhanu Babu Sudisht, 11 O. C. 15.

———**Remarriage**—*Effect of guardianship.* A Hindu mother who is her son's guardian does not by the mere act of remarriage forfeit her position as guardian.

Jago v. Oodol, 4 Nag. L. R. 20.

———**Succession**—*Dayabhaga—Sister's daughter's son—Succession certificate Act (VII of 1889)—Prima facie title.* When persons alleging to be the sister's daughter's son of a deceased Hindu governed by the Dayabhaga law, applied for a certificate under Act VII of 1889 to collect debts due to the deceased.

Held, without expressing a final opinion on the question that *prima facie* a sister's daughter's son are not heirs under the Dayabhaga law, and are entitled to the certificate.

Maclean C. J. & Dass J

Krishna Pada v. The Secretary of State for India, 12 C. W. N. 453.

——— *Widow taking absolute estate under a consent decree—Suit by reversioners to recover property after her death—Limitation Act, Arts 120 and 123.* Under a consent decree it was agreed upon between a widow and her husband's brothers, who were her next reversionary heirs, that she should take absolutely her husband's share in the family property. The family immoveable property was sold and a certain sum was given her as her husband's share. Eleven years after her death the reversionary heirs brought a suit to recover the property from the hands of executors appointed under her will.

Held (1) that the reversionary heirs were estopped from bringing a suit to recover the property after the arrangement which they had made with the widow. The ordinary restrictions would not apply to property which has passed to a widow not as heir, but by deed or other arrangement conferring on her absolute powers.

(2) That as the immoveable property was converted into money, and the money became moveable property in her hands and lost all impress of its origin article 120 of the Limitation Act applied, and the suit was time-barred.

Beaman J

Ganpatrao v. Vamanrao, 10 Bom. L. R. 210.

——— *Reversioner—Suit by—Widow—Alienation partly for binding purposes, not void—Setting aside—Terms.* A sale by a widow effected for the purpose of discharging the debts binding on the reversion, even though more money than was necessary for the purpose of discharging the debts was obtained by the sale, is not void and cannot be set aside at the instance of the reversioner except on the payment of the amount binding on the reversion with interest when the widow dies.

Boddam & Munro J. J.

Gouri v. Tirumaya, 18 M. L. J. 17.

——— *Widow's estate—estate—Moveables inherited from husband—Gift invalid.* A Hindu widow is not competent under the Mitakshara to make a gift of moveables inherited by her from her husband who died childless and intestate.

Russell. A C. J. & Heaton J.

Pandharinath v. Govind, 32 Bom. 59.

Interest Act (XXXII of 1839)—Plaintiff not a Hindu—No agreement to pay interest—Interest when allowed. *Held*, that where the plaintiff is not a Hindu, and there is no agreement for payment of interest, he can recover the same only (a) by mercantile usage, (b) under the Interest Act XXXII of 1839. In the latter case there must either be (1) a sum

certain, payable at a certain time by a written instrument, or (2) a demand of payment in writing giving notice that interest will be claimed. The plaintiff cannot claim interest by way of damages under section 73 of the Indian Contract Act, as this section is not intended to over-ride the provisions of the Interest Act.

Pratt & Hayward. J. C.

Haji Mus v. Haji Nur Mahomid 1 sind L R 119.

Invecutions and Designs Act (V of 1888)—*Sec. 4. (9) and (10)—“District” and “District Court,” meanings of—“District court.” if it includes High Court in its Original Jurisdiction—sec. 29 (2) (3) and (4) bars certain defences to an action—secs. 30 and 31 application for a rule to a High Court Procedure—Intention of legislature.—The expression “District Court,” as used in sec. 29 (1) of the Inventions and Designs Act includes High Court in the exercise of its Ordinary original Civil Jurisdiction, under sec. 4 (1) of that act.*

The legislature intended that objections indicated in sec 29 (2) (3) and (4) should not be allowed to be raised in defence to an action for the infringement of an exclusive privilege acquired under Part 1 of the Act but must be raised under the provisions of Sec. 30 and 31 of the Act, by applying to a High Court for a rule to show cause why the Court should not declare that the exclusive privilege so acquired had not been so acquired, by reason of the objections mentioned in the two latter sections.

Fletcher J.

Kedarnath v. Ganesh Chandra 12 C. W. N. 446.

Jurisdiction—Small Cause court—plaintiff giving credit for a sum admittedly due from him to defendant whether amounts to relinquishment—A sued B in a Presidency Small Cause Court on a guarantee contract where by B was bound to pay him Rs. 3000 owed to him by C. A sued for Rs. 1887 after giving credit for Rs. 1112—11 admittedly due from A, to B; B questioned the jurisdiction of the Court on the ground that the subject matter was above Rs. 2000 and did not admit the amount for which A gave him credit; *held*, that the Small Cause Court had no jurisdiction, A's giving credit to B for Rs. 1112 did not amount to relinquishing the claim so as to enable him to sue in the Small Cause Court which had no jurisdiction for his claim in full.

Fox C. J.

Khuger Co. v. Berjin 13 Bur L. R. 367.

Land Registration Act (VII B. C. of 1876)—*Co-trustee application by for registration—Refusal by the Revenue authority to direct registration—suit, maintainability of—Declaration of right to possession.—Where plaintiff's application for the registration of his name as a co-trustee under*

the Land Registration Act was refused by the Revenue authorities.

Held—That a Civil Court is not competent to direct the action of the Revenue authorities under the Land Registration Act, and a suit brought by the plaintiff with the object of obtaining an order from the Court which would bring about a re-consideration of the order passed by the Revenue authorities so as to obtain the registration of the Plaintiff's name as a co-trustee is not maintainable.

Held, further, on the construction of a compromise decree on the basis of which the suit was brought, that the plaintiff was not entitled to a declaration of his right to the possession of the trust property jointly with the Defendant—this order, however, not affecting the right of the plaintiff or any one else to take action in the case of any malversation by the Defendant.

Chhatrupat v. Maharaj Bahadur 12 C. W. N. 441 P. C.

Landlord and Tenant Act (Bengal 8 of 1869)—S. 6—*Kamat land*—*Right of occupancy*—*Tenant holding over*—Where the rights of the parties were governed by Act 8 of 1869, lands which were *Kamat* did not cease to be so by virtue of *amokurari* settlement of the same. A tenant of *Kamat* land does not acquire a right of occupancy by holding it over after the expiry of the lease.

Stephen & Dass J. J.

Syed Khalilur v. Rupan. 12 C. W. N. 436.

Landlord and tenant—*Transfer of tenancy*—*Duty of landlord to grant patta to new tenant*—A person, claiming to have a *patta* tendered him as transferred from a tenant, is bound, if called on, to produce the transfer in his favour for the zemindar's inspection in proof of his claim, and if that is apparent and if after notice, which it is the Zemindars' duty to give, the old tenant does not contest the validity of the transfer it is the duty of the zemindar to grant a *patta* to the new tenant, even though there is no petition from the old tenant asking him to recognise the transfer.

Benson & Wallis J. J.

Vadlamanati v. Raja Vencat Row 3 M. L. T. 235. = 31 Mad. 64.

—————*Ejectment*—*suit for*—*Tenancies of homestead land*—*Tenancy created before the Transfer of Property Act*—*Abandonment or surrender*—*notice to quit, if necessary*—Previous to the passing of the Transfer of Property Act, tenancies of homestead land created for the purpose of habitation were not transferable except by custom or usage.

Dooga v. Brindabuse 15 W. R. 274 distinguished.

Where there has been an implied surrender of the land, and the former tenant has abandoned the land and transferred it to another and no longer pays rent for it, the landlord is justified in regarding the conduct of the former tenant as amounting to an implied surrender and he is now entitled to take direct possession of it. *Rampini & Pargiter J. & J.*

Hanuman v. Deo Charan 7 C. L. J. 309.

Landlord and Tenant—*Distrain for larger amount than what is due and void, but will be good for amount actually due.*) An attachment under the Rent Recovery Act by the landlord for a larger amount than is actually due is not when the patta claiming the larger amount is not altered by the Court, altogether invalid, but will hold good for the amount actually due. It may be different in the case of actual sale because by a sale the property of the tenant passes away from the tenant altogether, while in the case of an excessive attachment the aggrieved tenant can apply to the Collector for redress. *Pichu Ayyangar v. Oliver*, 10 Mad., 260, distinguished. *Ramachandra v. Narayanasawmy*, 10 Mad., 229, followed.

Benson & Miwer J. J.

Periakaruppa Pillai v. Manager of the Lessees of the Sivaganga Zamindari, 31 Mad., 22

—————*No charge for second crop on dry land allowable without proof of its propriety by the landlord—Custom—Isolated transactions extending over a few years not sufficient proof of custom.*) An additional charge for a second crop grown on dry land without the aid of water supplied by the landlord is unusual, and it lies on the landlord seeking to impose it, to establish its propriety. A customary right to impose such a charge is not proved when all the evidence in support of such custom is the testimony of a single witness who says he paid it and accounts extending back to 25 years which show that demands for the additional charges were made on certain tenants, but which do not show that they were ever paid.

Wallis & Miller J. J.

Kumara Reddi v. Nagayasami Thambichi Naiker. 31 mad., 17.

Legal Practitioners Act (XVIII of 1879,) S. 13—*Professional misconduct—Pleader under pecuniary liability to a client attempting to make a composition with the client favourable to himself.* Held, that a legal practitioner, who, believing himself to be under a pecuniary liability to his client, endeavours to get the client to accept a less amount than that for which he is liable, cannot be held guilty of improper conduct in the discharge of his professional duty" within the meaning of section 13 of the Legal Pra-

ctioners Act, 1879.

Stanley O. J., *Bannerji & Aikman J. J.*

Ahsan Ali In the matter of—A. W. N., 1908, 70.

Land Revenue Code (Bom. Act v of 1879), Sec. 84—Landlord and Tenant—Annual tenancy—Determination—Notice. An annual tenancy to which the Land Revenue Code (Bom. Act V of 1879) applies cannot be determined under section 84 of the Code without the notice in writing required by that section.

Jenkins C. J. & Heaton J.

Ochavulal v. Gopal, 32 Bom. 78.

Limitation,—execution of decrees—Period of Limitation, when begins to run—Original or Appellate decrees—Civil Procedure Code, sec 230—Decree modifying original decrees. *Per Rampini J.*—When an application is made to execute the decree passed on appeal modifying the decree made in the Court of first instance, limitation begins to run from the date of the decree in appeal and not from the decree of the first court as it is not the decree sought to be enforced.

Per Sharfudin J.—It is only the last decree that can be executed, and limitation would begin to run from the date of the appellate decree and not from that of the original decree.

In cases where the original decree has either been set aside or modified that decree ceases to exist, and for the purposes of limitation, the date of the appellate decree should be taken into consideration, not the date of the decree that has ceased to exist.

In cases where the court of appeal affirms the original decree, the general rule is to be followed and the date of the appellate decree affirming the original one is the date from which the period of limitation is counted.

Rampini & Sharfuddin J. J.

Mahomed v. Mohini, 7 Cal. L. R 305.

———**Secs 7, 8—Minority of one of several decree holders—Extension of time.** Where one of several decree-holders is a minor he can get an extension of time after the cessation of his disability and he may apply for execution of the whole decree. *Surjo v. Aun*, 28 Cal. 465 *Goviudram v. Tatia*, 20 Bom. 383, and *Zamir v. Sundar*, 22 All. 109 followed. *Periasami v. Krishna*, 25 Mad. 431. not followed.

Rampini A. G. Sharfuddin J. J.

Sheikh v. Srimati, 7 C. L. J. 308.

———**Sec. 7—Custom—Alienation by sonless proprietor—Right of after-born reversioner to object.** Though a reversioner born after an

donation has been made is under certain conditions competent to contest its validity yet he can only do so if the period of limitation had not expired before the date of his birth and his suit is brought within the period prescribed by law. He cannot, if born after the cause of action has already accrued and time begun to run, claim extension of time under sec. 7 of the Limitation Act.

Rattigan & Lalchand J. J.

Umra v. Ghelam, 9 P. L. R. 74.

—**s. 12—time requisite for obtaining copies of judgment and decrees**—In calculating the period of limitation, the time taken in getting copies of both the judgment and the decree appealed against even though applied for separately is to be deducted.

Hartnoll & Moore J. J.

Ma Thein v. Fouar 14 Bur L. R. 8

—**Sec. 14.—“Unable to entertain” and “unable to decide,” distinction between**—“Some other cause of the like nature,” what is misjoinder of parties and causes of action—“Prosecution with due diligence”—A plaintiff can not be said to have prosecuted a suit with due diligence within the meaning of sec. 14 of the Limitation Act when owing to his own negligence or default, the suit is so framed that the court can not try it out on the merits.

An improper joinder of parties or of causes of action is not “a case of a like nature” contemplated to fall within the meaning of sec. 14. *Bai Jamna v. Bai Ichha* 10 Bom. 604 followed. *De Prosad v. Pertab Kairee*, 10 Cal. 86. *Mathura v. Bhowani* 22 All. 248 dissented from. *Mullick v. Shed Pershad* 22 Cal. 821. *Arsan v. Pathumma* 22 Mad. 494. Distinguished.

Harington T. J. & Fletcher J. Maclean C. J.

The Indian Publishers Ltd. v. Samvel Charles 12 C. W. N. 473

—**Art. 11—Ss. 278, 283—C. P. Code—Order dismissing claim for default set on order made after investigation and need not be set aside within one year under art 11 of schd. II of the Limitation Act.** An order dismissing a claim presented under section 278 of the Code of Civil Procedure for default is not an order made after investigation within the meaning of that section and is not conclusive under section 283 of the Code of Civil Procedure. Article 11, schedule II, of the Limitation Act does not apply to such orders; and the party against whom the order is made can maintain a suit to establish his right within the ordinary period of limitation applicable to such suit, although he has not had the order set aside within one year. *Sarat Chandra v. Tarivi Prosad*, 11 C. W. N., 487 approved.

White C. J. & Miller J.

Sarala Subba Ram, v. Karnala Timmaya, 31 Mad., 5

—————**Art. 105—effect of**—Art 105 of the Limitation Act must not be construed so as to conflict with the provisions of S. 43 of the C. P Code and must be deemed to refer to cases in which the mortgagor has got possession of the mortgaged property otherwise than by a suit for redemption

Aikman & K. Hussain J.

Ramdin v. Bhup Singh 5 All. L. J. 192.

—————**Art 106-120—Suit by expelled partner for account**—A suit by the repelled partner for account or for dissolution of partnership and a share of the profits is not governed by art 106, but by Art 120 of the Limitation Act.

Rampini & Sharfudin J J.

Dwarkadas v. Chunilal 12 C. W. N. 455.

—————**Art. 106—Partnership assets realized subsequent to dissolution—Cause of action.** Where the plaintiff sues for partnership accounts being taken and for being awarded such sums as are found due to him, he must bring his suit within three years of the date of dissolution of the partnership. If, subsequent to the dissolution, he has realized money by the sale of some partnership books, some partnership property, and entered the same in the partnership books, such entry will give him no fresh cause of action, and will in no way affect the period of Limitation as prescribed by article 106 of the Limitation Act.

Pratt & Crouch J. C.

Verhomal v. Gobindram, 1 Sind. L. R. 169.

—————**Arts. 111 and 132—Limitation—(Transfer of Property Act), s. 55 (4) (b)—Suit by vendor to enforce charge for unpaid balance of purchase money.** Held that a suit for the enforcement of the payment of purchase money by sale of the purchased property is a suit to enforce a statutory charge differing from the lien which an unpaid vendor in equity possessed for the recovery of the balance of his purchase money and that the article of the Limitation Act applicable is article 135 and not article 111. *Webb v. Macpherson*, 31 Cal., 57. *Har Lal v. Muhmadi*, 21 All., 454 and *Ramkrishna Ayyar, v. Subrahmania Ayyan*, 29 Mad., 305 followed. *Baldeo Prasad v. Jit Singh*, Weekly Notes, 1891, p. 130 overruled.

Stanley C. J. Burditt & Aikman J. J.

Munir-un-nissa v. Akbar Khan, A. W. N. 1908. 71.

—————**Art. 119—Period of Limitation applicable to suits where factum and also validity of adoption is denied.** Suits in which either the factum or validity of an adoption is denied are governed by the provisions of article 119 of schedule II to the Limitation Act.

The observations to the contrary in *Ningawa v. Ramappa*, 28 Bom. M. and *Shivrum v. Krishnabai*, 31 Bom. 80, dissented from.

Skrinivas v. Hanmant, 24 Bom. 260, followed and applied.

Chandavarkar & Heaton J. J.

Laxman v. Ramppa, 32 Bom. 7.

———**Art. 123—Scope of.** Article 123 of the Limitation Act is applied to cases of reversioners suing to recover property which has been held for some intervening time by a widow whether that property be moveable or immoveable.

Beaman J.

Ganpatrao v. Vamanrao, 10 Bom. L. R. 210.

———**Art. 172—Application for enforcement of payment of costs** by a solicitor against his client is not an application under the Civil Procedure Code—**Art. 178 applies only to applications under Civil Procedure Code—H. C. Rule No. 859.** There is no period of limitation provided for an application by an attorney for payment of his costs under rule 859 of the High Court Rules. Article 178 of the Limitation Act applies only to applications under the Civil Procedure Code. *Bai Manekbai v. Manekji Kavaji* 7 Bom. 213, followed.

Davar J.

Wadia, Gandhi & Co. v. Purshotam, 32 Bom. 1.

———**Arts. 178, 179—Execution—When prior application to be considered pending.** So long as the proceedings in execution initiated by the decree-holder are pending his right to apply for their continuance occurs from day to day i. e. on every day on which the Court does not *suo motu* continue them. The right to apply for execution will not be barred till 3 years have elapsed after the proceedings have ceased to be pending.

An order "dismissing" an execution petition on the ground of stay of execution pending an appeal to the appellate Court is not a nullity; but, if passed without notice and in the absence of parties it cannot be regarded as an order between the parties at all, but is merely a direction to the officer of the Court to remove the proceedings from the pending list. The execution petition itself should, under the circumstances, be considered as pending.

Miller & Munro J. J.

Chalavadi v. Paloori Alamelarmal 18 M. L. J. 46.

———**Arts. 178, 179—Revenue Recovery Act (Madras) Act VIII of 1865, ss. 36, 38, 40—Applications under s. 40 of the Revenue Recovery Act to Civil Courts are for purposes of limitation governed by art. 178 of the Limitation Act** Where the purchaser of immoveable property sold under section 36 of the Revenue Recovery Act, obtains a certificate as provi-

ded by section 38 of the Act, and applies to a Civil Court for delivery of possession under section 40 of the Act such application, for purposes of limitation is governed by article 178 and not art 179 of the Limitation Act, and will be time barred if not presented within 3 years from the time when the right to apply accrues. The effect of section 40 of the Revenue Recovery Act is to place the purchaser in the position of a decree-holder for the purpose of putting the machinery of the Court in motion to give effect to the certificate of the Revenue authority. Section 40 does not, however, by implication make the law of limitation with reference to the execution of decrees or orders of Civil Courts applicable to proceedings taken under its provisions. The grant of certificate under section 38 cannot be considered as a decree or order of a Civil Court, although for the purposes of section 40 it may be regarded as a decree or order. An application under section 40 of the Revenue Recovery Act is an application within the meaning of article 178 of the Limitation Act. *Gnuma Sambanda Pandara Sannadhi v. David Nadar*, (14 M. L. J., 433) distinguished. *Sueya Pillai v. Ayyakannu Pillai*, 29 Mad, 529, applied in principle.

White C. J. & Miller J. J.

Sambasiva Mudaliar v. Panchanada Pillai, 31 Mad., 24.

———**Art. 179, Cl. 4.**—*Application in recordance with law step in aid of execution*—C. P. C. S. 232.—*Application by the transferee—decree holder to be recognized as such.*—Where a Court received an application by the transferee decree holder for recognition as transferee and ordered the same, without returning it on the ground that it was not in accordance with sec. 232 C. P. Code, and there was no appeal from the order, *held* that the application was an application in accordance with law and that a subsequent application for execution within 3 years from the date of the original application was not barred. *Obiter!*—An application by the transferee—decree-holder for the mere recognition by court as transferee is a step in aid of execution.

Wallis & Sankaran Nair J. J.

Annamalai v. Ramaier 18 M. L., J. 25.

Madras Darkhast Rules—*Darkhast of land within Port limits—Grant without consulting presidency Port Officer mere irregularity—Grant not set aside on appeal within time—Binding character of.*—Per Munro J.—A Darkhast grant made by a Divisional Officer, without previously consulting the Presidency Port Officer as required by Government Order No. 4017 is a perfectly good and valid grant, the same being within the scope of the Divisional Officer's authority.

The Divisional Officer is not bound to follow the opinion of the Presidency Port Officer according to the Government Order mentioned.

Per Sankaran Nair J.—A Darkhast grant by a competent authority is binding on the Crown unless it is cancelled on appeal within time.

The Notice to the Port Officer required by Government Order No. 4017 is only a formality, and the omission to give such notice before making a Darkhast grant of land within Port limits is a mere irregularity, the Revenue Officer not being bound to follow the opinion to the Port Officer.

Munro & Sankaran J. J.

Mahammade v. The Secretary of State for India 18 M. L. J. 62.

Madras Rent Recovery Act VIII of 1865, § 11—*Agreement to pay special rate for particular crops is not an enhancement of rent and is not invalid unders. 11.* Where the landlord and tenant, in commuting the waram into a money rate, agree that the latter should pay an increased rate for certain cultivation, such agreement, even if it secures to the landlord an increased rent in consequence of improvements effected by the tenant, is not an enhancement within the implied prohibition of section 11, proviso 1 of the Rent Recovery Act, as it only secures to the landlord the benefit he would have under the waram system, to which he could revert in the absence of a contract. A custom by which an increased rate is payable on betel cultivation even carried on by improvements effected by the tenant is not illegal or unenforceable as opposed to the policy of section 11 of the Rent Recovery Act. *Fischer v. Kamakshi Pillai*, (21 Mad., 136) distinguished, *Gopalaswamy Chettiar v. Fischer*, (21 Mad., 328), distinguished. *Wallis & Miller J. J.*

Suppa Pillai v. Nagayasami Thumbichi Naicker, 31 Mad., 19.

Mahomedan Law—Inheritance—Right of children by 5th wife to inherit their father's estate—Marriage with a fifth woman invalid but not void. According to Mahomedan Law distinction is recognized between avoid and invalid marriage. The marriage with a fifth woman in addition to four living is merely invalid but not void and the children by the fifth wife are considered legitimate and entitled to succeed their father's estate though their mother cannot get her husband's property.

Johnstone & Lalchand J.

Khursaid Jan v. Abdul, 9 P. L. R. No. 25.

———*Pre-emption, when should the necessary claims be made—effect of unreasonable and unnecessary delay—Delay, a question of fact—Action to enforce a right of pre-emption—Mortgage—Redemption of the same by the purchaser from the plaintiffs as mortgagees—Effect of such redemption on the plaintiff's right to pre-empt.* The right of pre-emption must be exercised, and the claims necessary to give effect to it must be made, with

the utmost promptitude, and any unreasonable and unnecessary delay is to be construed as an election not to pre-empt, and whether there has been such delay is a question to be determined upon the facts of each particular case. Magniram & Jowhuri Lal the plaintiffs were owners in equal shares of twelve annas of certain properties comprised in a certain taluka. The remaining four annas belonged to the defendant Anupbati, who sold those annas to the defendant Nurbhoy. Magni and Jowhuri brought suits and claimed the right of pre-emption against the sale. The two plaintiffs had obtained a transfer of *zurupeshgi* mortgage binding the four annas share sold by Anupbati to Nurbhoy paid the mortgage money in Court, in accordance with the provisions of the Transfer of Property Act, for the purpose of redeeming the mortgage, and after some hesitation the two plaintiffs took out that money. It was contended that by so doing they had recognised the title of Nurbhoy under his purpose and could not claim pre-emption. Their Lordships could not agree with that contention and,

Held, that until a decree for pre-emption was made, Nurbhoy owned the land as purchaser and had a right to redeem: and that the taking of the money by the plaintiffs, as mortgagees, was no recognition of anything more than that, and was quite consistent with the claim to pre-empt. P. C.

Baijnath v. Ramdhari, 7 Cal L. J. 318.

———**Wakf**—grave yard C. P. Code Ss. 30 and 539—*suit by members of a community*.—A graveyard may be so by user if not by dedication. That such user does not deprive the owner of his title but the title remains subject to the user of the land as wakf. The plaintiffs as members of the Mahomedan community are competent to institute the suit, and Ss. 30 and 539 of the C. P. Code do not apply to the case. It is not necessary for each plaintiff to show that he had used the graveyard. A new comer if a Mahomedan has an equal right with the oldest residents. By the fact that previously some portions of the land pertaining to the graveyard had been alienated without objection on the part of any one, the plaintiffs do not lose their right to object to further alienation.

Chatterji & Johnstone J. J.

Ilahibux v. Court of Wards 9 P. L. R. 213.

Mamlatdars' Courts Act (Bombay Act II of 1906), sec. 19, cl. (b)—*Possessory suit—Trespasser dispossessing the tenant during the duration of tenancy—Landlord suing to recover possession within six months from the determination*. On the 5th June 1905, the plaintiff let certain lands to defendants Nos. 1 and 2. During the continuance of the tenancy defendant No. 3, a trespasser, dispossessed defendants Nos. 1 and 2

and got into possession of the lands in November 1905. The tenancy determined on the 6th June 1906. On the 29th October 1906, plaintiff filed a possessory suit in the Mamlatdar's Court against the defendants Nos. 1—3 to recover possession of the lands. The defendant No. 3 contended that her adverse possession having commenced more than six months before the institution of the suit, the Mamlatdar had no jurisdiction so far as the plaintiff's claim against her was concerned.

Held, that the plaintiff's remedy having been to bring his suit under clause (b) of section 19 of the Mamlatdars' Courts Act (Bombay Act II of 1906), on the expiry of the tenancy, the fact that a trespasser got into possession during the continuance of the tenancy, but more than six months before its determination, did not oust the Mamlatdar's jurisdiction.

Per Chandavarkar J.—The Mamlatdars' Courts Act (Bombay Act II of 1906) is a remedial measure and must be liberally construed so as to advance the remedy.

Chandavarkar & Knight J. J.

Deu Dada Gavli v. Sitaram, 32 Bom. 46.

Mesne profits.—*Application to determine—Dismissal for default—Fresh application—Limitation—striking off and dismissal of, application, difference between—Decree, execution of, application for*—Applications to determine mesne profits are treated as applications for execution of the decree and the striking off of such cases does not finally decide them or prevent the decree holder from making a further application for the determination of mesne profits.

There is no substantial distinction between an order striking off an application and one dismissing it for default.

Rampini & Sharfuddin J. J.

Upendra v. Sakhi 7 C L. J. 301.

Mortgage—*Mortgage by a Hindu widow without legal necessity—Destruction of property by fire—Mortgagees rebuilding the property—Suit by reversioner at widow's death to recover possession of property—Mortgagees not entitled to claim repairs or to remove the construction before delivering possession.* A Hindu widow inherited a shop from her son and mortgaged it without any legal necessity recognised as such by Hindu law. The property having been destroyed by floods, the mortgagees rebuilt it with their own money. At the widow's death, the reversioner sued to recover possession of the property free from all incumbrances.

Held, that the mortgagees spent the money while holding the property under a mortgage not binding on the reversioner, and what they did

must be presumed in law to have been done unauthorisedly so far as that reversioner was concerned.

Held, further that the building having been treated by the mortgagees as property mortgaged to them by the widow without legal necessity, there was no equity arising in their favour as against the reversioner, who was entitled to recover it in the condition in which it was when the widow died.

Vinayakrao v. Vidyashankara Bom. L. R. 404; *Premji Jivan Bhat v. Haji Cassum Juma Ahmed*, 20 Bom. 298 and *Narayan v. Bhalagir* 6 Bom. H. C. B. (A. C. J.) 80, distinguished.

Chandavarkar & Heaton. J. J.

Vrijbhukandas v. Dayaram, 32 Bom. 32.

Mortgage—Right of redemption—Who can claim. Redemption is an incident of the contract of mortgage, and the right to it only exists in persons whose interests in the mortgaged property are reached and bound by the mortgage.

Where the owner of an interest in property which has been mortgaged, repudiates the mortgage as unauthorized and not binding on him, he has no right to redeem. Such right is not any part of the right to avoid the mortgage.

Ghanyo v. Ukundroy, 4 N. L. R. 9.

———**Non receipt of full consideration—Postponing payment of a part of mortgage-money till mutation of names—Complete transaction.** *Held*, that a mortgagor cannot successfully plead that the mortgage of land effected by him is not enforceable by reason of non-receipt of the mortgage money in full when he agrees to wait for receiving a part of it till the mutation of names and has not received a small balance of the amount set apart to meet expenses of the mortgage deed *Chatterji J.*

Mangladha v. Lalehand, 2 P. W. B. 117.

———**Unregistered deed—Sale of the property hypothecated—Purchaser having notice of the mortgage—Property pre-empted by the defendant—Whether notice to pre-emptor.** A right of pre-emption is not a right of re-purchaser but is simply a right entitling the pre-emptor to be substituted for the vendee as purchaser and to stand in his shoes in respect of all the rights and obligations arising from the sale under which he derives his title. He can only get what the vendee bargained for.

Where, therefore, a vendee purchased with notice of a prior unregistered incumbrance and the property is pre-empted, the pre-emptor takes subject

to that mortgage even if the existence of that mortgage was concealed from him.

Stanley C. J. & Burkitt J.

Tej Pal v. Girdhari Lal, 5 A. L. J. 223.

———*Transfer of Property Act, s. 68 (c)—Construction of document—Power of sale in a usufructuary mortgage.*—A mortgage deed which was primarily usufructuary provided that if the mortgagor failed to deliver possession or if the mortgagee was dispossessed from the mortgaged premises he might recover the amount of the mortgage debt from the mortgagor and the mortgaged property. *Held* that the mortgagee failing to get possession was competent to sue for and obtain a decree for sale of the mortgaged property.

Stanley C. J. & Burkitt J.

Narpat v. Ram Saran Das, A. W. N., 1908, 70.

———*Construction—T. P. A., S. 76—"Contract to the contrary"*—A mortgage deed ran in the following terms:—"In consideration of an advance of Rs 795-8-0 the mortgagee is to hold possession, for 12 years of land yielding a pattam of 80 paras of paddy and Rs. 40 and is to pay a purapad of 12 paras of paddy and 12 fanams and 50 ceconat leaves "having deducted interest and Government revenue."

Held, that there was no contract to the contrary within the meaning of sec. 76, T. P. A. and that the burden of an enhancement in the Government revenue fell upon the mortgagee.

The mortgagee should *prima facie* bear the burden of an enhanced assessment, and it is on the mortgagee to prove a contract to the contrary in order to escape liability.

Miller & Munro J J.

M. Tuppan v. V. P. Chinna 18 M. L. J. 31.

———*s. 78—Priority Gross negligence—Failure to get possession of title-deed does not necessarily amount to gross negligence where system of registration exists—Delay, effect of, in a registration of documents.*—A mortgaged property to B on 21st December 1896 and subsequently mortgaged the same property to C on 20th January 1897. A wilfully delayed the registration of the mortgage-deed to B, which was finally registered on the 21st April 1897. The title-deeds of the property were not given to B, but were given to C when the property was mortgaged to him. The mortgage was executed outside Madras and was in respect of property in the mofusil. In a suit by C. to recover the amount due on his mortgage-deed, C claimed priority over B on the ground that B was guilty of gross negligence in not obtaining possession of the title-deeds:—*Held*, that the failure on B's part to obtain the title-deeds from A did not, under the circumstances, amount

to gross negligence within the meaning of section 78 of the Transfer of Property Act and did not postpone his mortgage to that of C. *Held* that the delay in the registration being due to the default of A which B could not have anticipated, did not make B's failure in obtaining the title-deeds amount to gross negligence. What amounts to gross negligence must be determined according to the circumstances of each case; and one of the circumstances to be taken into consideration in this country is that a universal system of registration is established by law. As registration puts subsequent incumbrancers in a position, with the exercise of reasonable care, to find out prior encumbrances, failure on the part of the prior mortgagee to get possession of the title-deeds must not be imputed to him as gross negligence. The system of registration having caused mortgagees to attach little importance to the possession of title-deeds, the existence of a practice by which the title-deeds are left with the mortgagor must also be taken into consideration. Another fact to be considered is that the possession of title-deeds in the Presidency towns where mortgages may be created by depositing them is of greater importance than in the mofussil. *Damodara v. Sumasundara*, 12 Mad. 429, considered and distinguished. *Shan Maun Mull v. Madras Building Company*, 15 Mad. 268, considered and distinguished. *Monindra Chandra v. Troyluckho Nath Burat*, (2 C. W. N., 750), followed.

Wallis & Miller J. J.

Rangasami Naiken v. Annamalai Mudali 31 Mad., 7.

Negotiable Instruments Act s. 50.—Holder in due course.—A sued B on a promissory note the defence being that A was not the holder of the note in due course, that it was not presented at maturity nor had notice of dishonour been noted by a notary public, that the note was one made and delivered by B in consequence of fraudulent misrepresentations by P., who then owed him money on account of a far larger amount which he promised to pay but did not pay. The note was found to have been given by B to P in connection with some partnership transactions between them; on those transactions being brought to an end P discounted the note with the Bank; when it was not paid, the Bank returned the note to him. He subsequently handed the note to C. to whom he owed Rs. 2000 and wrote his second signature on the back, C handed it to his clerk, A, in order that the latter should file a suit on it.

Held that A was not a holder in due course of the note, as he admittedly had not become the possessor of it for consideration and that A could not sue upon it.

Fox C. J. & Irwin J.

Babu Gorekut v. Ebrahim 14 Bur. L. R. 25.

Oaths Act—(Act X of 1873,) Ss. 11, 12—*Where plaintiff agreeing to take oath subsequently refuses, Court cannot dismiss suit but must record the fact of refusal under s. 12 and proceed with the suit.* The defendant in a suit agreed in the course of the trial to be bound by the statement on oath of the plaintiff as to certain facts. By an agreement in writing between the parties the plaintiff agreed to take the oath as required on a certain date, that if he failed to do so the suit should be dismissed; and that if the defendant prevented the taking of the oath, there should be a decree for plaintiff. Before the appointed day, the plaintiff applied to withdraw from the agreement but the Court refused the application. The plaintiff failed to take the oath and the Court declined to allow the plaintiff to adduce further evidence and dismissed the suit:—*Held* that the Court ought not to have dismissed the suit, but should have recorded the refusal and the reasons therefore under section 12 of the Oaths Act and proceeded with trial. The agreement did not amount to an adjustment of the suit so as to bar further proceedings in the trial. *Umayammui v. Muthia Nadar*, (17 M. L. J., 99), distinguished. *Vasudeva Shanbog v. Narain Pai*, 2 Mad., 356, followed. *Per* Miller, J., *obiter*: If by the act of the party refusing to take the oath, the other party has lost evidence which was available to him, the Court may be justified in refusing to allow the former to adduce evidence.

White C. J. & Miller J.

Moyan v. Pathukutti 31 Mad., 1.

Occupation holding—Non-transferable, transfer of—Abandonment—Permission possession of homestead land—khas possession, suit for. An occupancy rayat sold his holding, which was not transferable by custom, and gave up possession to the purchaser of all the culturable lands of the holding and remained in possession of the homestead land only by permission of the purchaser.

Held, that was sufficient to indicate that the rayat had abandoned his holding and he was liable to the consequences of such abandonment. The landlord is entitled to recover khas possession against the raiyat and the purchaser.

Brett & Sharfuddin J. J.

Sailabalak v. Sri Ram, 7 C. L. J. 303.

Partition Act (IV of 1893), sec. 2—Decree for partition—Partition of a house in two divisions—The mode of division found inexpedient in execution of the decree—Power of Court to order sale of the house and to divide the sale proceeds. A decree for partition of a house ordered its division into two equal moieties. In execution of the decree this mode was found inexpedient, and the Court, therefore, ordered the house to be sold

and the sale proceeds to be equally divided between the parties under section 2 of the Partition Act (IV of 1893). On appeal—

Held, that the order was right, for section 2 of Partition Act (IV of 1893) applies, not only where the Court has to pass a decree in a suit for partition, but also where, after the Court has passed such a decree directing the partition to be effected in a particular mode, it is found that the mode is impracticable or inexpedient and one of the parties asks the Court to modify the decree by passing an order under this section.

Kadir Bacha Saheb, v. Abdul Rahiman Saheb, 24 Mad. 639 and *Hiramani Dasi v. Radha Churn Kar* (1899) 5 Cal. W. N. 128, followed.

Chandavarkar & Heaton J. J.

Bai Hirakore v. Trikamdas, 32 Bom. 103.

Partnership—*Execution of one member by others, if causes dissolution*—Contract Act sec. 252 (7)—*Suit for account or dissolution by excluded partner*—Limitation Act, arts. 106, 120. Under the Indian Law there is no dissolution of partnership when one partner expels the other.

A suit by the expelled partner for account or for dissolution of partnership and a share of the profits is not governed by Art. 106 but by Art. 120 of the Limitation Act, and is within time if brought within 6 years of the date of expulsion.

Under the Indian Law a partner can be expelled only by an order of the Court.

Rampini & Sharfuddin J. J.

Dwarka Das v. Chumilal, 12 C. W. N. 455.

Pensions Act, Act (23 of 1871) s. 4—*Act does not apply to endowments for pious or religious purposes*. Endowments for religious or pious purposes do not fall within the purview of section 4 of the Pensions Act and Civil Courts have jurisdiction to entertain suits in respect of such grants made by Government. *Miya Vali Ulla v. Sayad Bava Santi Miya*, 22 Bom. 496 dissented from.

Benson & Sankaran Nair J. J.

Venkateswara Aiyar v. The Secretary of State for India in Council, 31 Mad., 12,

Ports Act (IX of 1899), sec. 6—*Rule 5 of the Karachi Port's rules Summarily ordering a vessel to leave the Port—Legality of such rule. Held* (1) The public have at common law a right of navigation in all tidal navigable waters, and it follows that the public have right to keep their vessels for a reasonable time for the purposes of trade and commerce in a Port like that of Karachi unless such right has been restricted by express provisions of the legislature.

Section 6 of the Ports Act X of 1899 only imposes conditions on steamers entering and leaving a Port, and provides for regulating the berths and anchorages to be occupied while the steamers are in the Port. But there is no provision in the Act summarily curtailing the time during which a vessel might stay in the Port of Karachi.

Rule 5 of the rules of the Karachi Port Trust framed under section 6 of the Act and which provides for the removal of vessels merely indicates that a vessel must either accept the berth assigned to it or go, but it does not mean that a vessel which has accepted a berth can be summarily ordered to leave the port.

An order issued by the Port authorities requiring a master of vessel berthed in the Port to leave the Port immediately, is *ultra vires* of the rule, and if not, that the rule is *ultra vires* of the Act.

A prosecution filed by the Port authorities for disobedience of such an order, must in law be held to be instituted without reasonable and probable cause.

Where a vessel is detained on account of such a prosecution having been launched against the master, the Port Trustees can not be held liable for damages for malicious prosecution unless the plaintiffs prove that the prosecution was instituted with malicious intention, and this cannot merely be inferred from want of reasonable and probable cause *Hayward J. C.*

The Knight Steamship Co. Ltd. v. The Karachi Port Trust, 1 Sind, L. R. 202.

Practice—Pleader having no instruction—duty of court.—Where a pleader engaged in a case informs the Court that he has no instructions the Court should ascertain whether the pleader severs his connection with the case.

S. Subramania Aiyar C. J. & Russell J.

Ramanuja v. Ramaswami 3 M. L. T. 225.

———*Ex parte decree—suit set down for hearing before the date fixed in Summons. Civil Procedure Code Sec's. 68, 69, 96, 100, 101, 112 & 113—High Court Rules, Nos. 111 and 112.*—The plaintiff is not entitled to have a suit set down for an *ex parte* decree before the date fixed in the summons for the hearing of the suit, even though the defendant has not filed his written statement within four weeks from the date of the service of the summons as required—under Rule 111 of the High Court Rules.

Jenkins C. J. & Batchelor J.

Dhirajlal v. Hormusji 10 Bom. L. R. 301.

———*Witnesses absent on adjourned hearing because not served—*

suit not to be dismissed.—Held, also, that when a Court adjourns the hearing of a suit for taking remaining witnesses of a party, summoned or to be summoned through the Court, but on that hearing they are absent for want of service, it can neither dismiss or decree a claim on that ground alone or, make use of the stringent provisions of sec. 158 C. P. C. and even that section does not authorize the Court to decide the suit against the party, all that the Court can do under that section is to proceed to decide it forthwith i. e. to decide the suit upon the material on the record at the time when the Court elects so to proceed.

Shah Din J.

Mussammat Kartar Devi 3 P.W.R. 121.

———*Leave to withdraw appeal—Duty of Executing Court—Suit for partition by co-sharer—Alienation by other co-sharers of part of the property.*—Where one of several Mahomedan co-sharers brought a suit for a general partition of property, impleading the alienees of some of the other co-sharers, and the Court held that it was not necessary to go into the rights of the alienees in the suit and that they should be left to their remedy by a separate suit, and thereafter one of the alienees brought the present suit for a share in the specific property sold to him, making the co sharers parties to the suit but not impleading the other alienees: *Held* that the suit was not maintainable in the form in which it was brought, but having regard to the special difficulties created by the judgment in the first suit, the plaintiff-appellant should be given permission to withdraw the suit with liberty to file a fresh suit.

Pratt & Crouch J. C.

Pir Mian Nuralkhak v. Mussamat Arbab Khattu 1 Sind L. R. 187.

———*Plaint—Presentation of—Suit by surviving partners—Non-joinder of one of the partners—Effect of—*(1) Where a suit based on a contract is instituted not in the name of the firm, but in the names of individual partners carrying on business in a particular name and style, all the persons who were partners at the time of the contract and are living at the time of the suit, must be made plaintiffs. The failure to join one of them cannot be remedied under section 27, Civil Procedure Code, which applies only where a suit is instituted in the name of a wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff.

(2) If the claim is time-barred as against such omitted partner at the time he expresses his willingness to be joined as a party, or comes forward to repudiate his interest in the claim, the court must dismiss the suit.

(3) Where one of the partners is dead, it is not necessary, in Sind, for the surviving partners to join the legal representatives of the deceased partners as co-plaintiff.

(4) Though under section 263, Indian Contract Act, the rights and obligations of partners continue after a dissolution, in all things necessary for the winding up of the business, yet it is only agents of a special kind that are recognised by the Civil Procedure Code, as having authority to make an appearance or application, or do an act, on behalf of a party to a suit. A plaint purporting to be in the individual names of the partners, but signed and verified by one of them as managing partner, and presented by a pleader holding Vakalatnama from him, after the partnership had been dissolved, is not duly filed or presented. Such a presentation is not a mere irregularity which can be cured by amendment.

Pratt & Crouch J. C.

Belumal Devalram v. Chelaram 1 Sind L. R. 191.

Pre-emption—Cause of action—Devolution by inheritance. The right to sue for pre-emption upon a cause of action which has accrued to a person in his life-time passes at his death to his successors on their inheriting his land which gave him the right to pre-empt.

F. B.

Faqir Ali v. Ramkrishna, 9 P. L. R. 245.

—————**No waiver—Mortgagee's accepting payment of mortgage money from vendee.** Held, that a mortgagee by simply accepting payment of mortgage money from the vendee of the mortgaged property does not waive his right of pre-emption.

Johnstone & Kensington J. J.

Fazalddad Khan, Sawan Singh, 3 P. W. R. 129.

—————**Suit for—Ostensible owner, decree for foreclosure, on a mortgage by—Transfer of Property Act, s. 41.—Held** that, where a mortgagee foreclosed a share mortgaged to him by one who was merely an ostensible owner, a suit for pre-emption brought by a co-sharer against such a mortgagee could not be defeated on the ground that the mortgagor was not the real owner of the share mortgaged and that the mortgagee had succeeded only by availing himself of the provisions of s. 41 of the Transfer of Property Act.

Chamrier J. C.

Sita Ram v. Sheo Prasad 11 O. C., 26.

Promissory note—Assignment of, fraudulent—Suit by alleged assignee—Oath by assignee as regards consideration for the note—If assignee entitled to decree. A sued B on a promissory note executed by him to C and which he (A) alleged to have been endorsed to A by C. B denied consideration for the note and also contended that the assignment was fraudulent. With the consent of parties, the plaintiff took an oath to the effect that the note was supported by consideration. On these facts the Lower Appellate Court gave decree for plaintiff.

Held, that the oath was not conclusive as to the suit, but only as to facts deposed to in the oath, and that there should be a distinct finding as to whether the assignment was fraudulent or was made in fact. The assignee having been found to be fraudulent the suit must be dismissed. *Gasudeva v. Narain* 2 Mad 356, *Thoyi v. Subraya*, 23 Mad. 234 referred to.

Benson & Wallis J. J.

Jattavna v. Bala, 3 M. L. T. 163.

Privy Council—Appeal to—Letters Patents Cls 10. 39—High Court Disciplinary jurisdiction—Suspension of Vakil—Leave to appeal—Privy Council. The applicant, a Vakil of the Bombay High Court, was suspended from practice for a period of six months by the High Court in the exercise of its disciplinary jurisdiction under clause 10 of the Letters Patent. The applicant applied for leave to appeal to his Majesty's Privy Council.

Held, that no appeal lay by right of grant against the order, as it was not in the nature of a final judgment, decree or order under clause 39 of the Letters Patent. It was open to the applicant to proceed by way of petition to His Majesty the King for leave to appeal. *Knicht & Macleod J. J.*

G. S. D. v. Government Pleader, 32 Bom. 106.

Pardanashin women—Relief—fraud—practice—Though the Court is always ready to give relief to illiterate women who have been imposed upon it must observe the ordinary recognised rules of law and procedure, and will refuse to grant relief to them on the ground of fraud unless it is specifically alleged and proved, and will not allow to them to vary their pleadings in the Appellate Court on the ground that their pleader had acted either dishonestly or unskillfully in putting forward their defence.

Lucas & Crouch J. C.

Mir Mian Ghulam v. Mussamat Hayat Khatun 1 Sind L. R. 160.

Punjab Courts Act (VIII of 1884), secs. 40, 70 (a)—Punjab Tenancy Act (XVI of 1887), secs. 116 (a), 117, 158 (2) XVIII—Jurisdiction of Civil and Revenue Courts—Suit for a declaration that an orchard on a portion of the village common land was planted by plaintiff alone at his own expense—'Land suit'—Pleadings—construction of partition proceedings—Question of title—'Mode of making partition'—Appeal. *Held*, that in this country pleadings are not to be strictly construed by their very letter, and the Courts have to consider what is the real point at issue between the parties.

The plaintiff prayed that a declaratory decree may be passed in his favour against defendants to the effect that a certain land occupied by a

guardian solely belongs to plaintiff, because he planted the garden thereon and holds possession thereof. The object of obtaining this declaration was to induce the Revenue authorities, when partitioning the land, to allot this particular area to him in accordance with the provisions of the Wajib ul-arz.

Held, that upon proper construction the suit was not a "land suit," and the suit having been valued at Rs. 400 no further appeal lay.

The appeal was treated as a revision and it was held that the suit was cognizable by Revenue Courts only, for the dispute between the parties was essentially one as to the allotment of a particular land as such, and there was no question of title involved in the suit, and the suit was excluded from the cognizance of the Civil Courts by sec. 158 (2) Clause XVIII of the Punjab Tenancy Act.

Rattigan & Shah Din J. J.

Dindyal v. Ahmed, 9 P. L. R. 254.

Punjab Tenancy Act (XVI of 1887), sec. 59—Landlord and Tenancy—Occupancy rights—Custom—Succession—Collaterals—Sonless adopted son's associated brother. On the death of an adopted son the brothers of his adopted father succeed to occupancy rights originally held by their common ancestor and inherited by the adopted son from his adoptive father, and natural brothers and nephews of the adopted son associated to him in cultivation have no right to succeed.

Johnstone J.

Saida v. Ismail, 9 P. L. R. No. 83.

Railways Act, Sec. 140—"May" means "must"—Notice of claim under sec. 77 on whom to be served—service on Traffic Manager insufficient. The word "may" in sec. 140 of the Railways Act means "must" and a notice of claim under sec. 77 of the Act for short delivery of goods must be served, when the railway is administered by a railway company on the agent in India of the railway company. *The East Indian Railway Co. v. Jethmull* 26 Bom. 669. *The Secretary of State for India in Council v. Dipchand Poddar* 24 Cal. 306. *Great Indian Peninsula Ry. v. Chandra Bai* 28 All. 552 approved. *Perianan Chetti v. The South Indian Ry.* 22 Mad. 137 disapproved. Service of notice on the Traffic Manager was insufficient.

Mitra & Caspersz J. J.

Nadir Chand v. Mr. Wood 12 C. W. N. 450.

Registration.—property above Rs. 100 in value—vendee not having a conveyance—mortgage by. Where a person agrees to buy immovable property for a sum exceeding Rs 100 and, being unable to pay the purchase money, executes and registers an instrument mortgaging that property to the vendor as security for payment of the price, but takes no deed of conveyance

from the vendor, the mortgage must be regarded as one by a person having no title in favour of the true owner and as such is not enforceable at law.

There can be no estoppel by a false statement where the truth as to the matter stated is known to both parties.

Sitaram v. Mr. Harku Bai 4 Nag. L. R. 28.

Religious Endowment Act, (XX of 1863), sec 14—Power to appoint a new trustee—Code of Civil Procedure sec. 539.—Sec 14 of the Religious Endowment Act only empowers a court to direct the specific performance of any act by the trustee, manager or to award damages or costs against such trustee, manager or superintendent and to direct their removal; it confers no power on the court to appoint a new trustee, manager or superintendent, for which the proceedings provided for by sec. 539 of the Code of Civil Procedure must be resorted to.

Bannerji & Richards J. J.

Sada Shankar v. Hari Shankar 5 A. L. J. 191.

Res-Judicata—Issue decided in Lower Court, and not dealt with in appeal. The finding of a Lower Court on an issue which is not dealt with in the Appellate Court is no more *res judicata* than if the finding were reversed.

Pratt & Crouch J. C.

Jivanmal v. Radhamal, 1 Sind. L. R.

—————**Execution proceedings—applicability.**—Although the use of the term “Resjudicata” in orders in execution proceedings is not strictly correct the orders in execution proceedings are governed by principles analogous to those of Res Judicata and are binding if not appealed against in subsequent proceedings in the same suit, their binding force depending not upon s. 13 of the C. P. Code but upon general principles of law.

Ibrahim v. Imam Din 14 Bur. L. R. 35.

—————**Finding of Revenue Court that there was no proper tender of patta is not res judicata in a civil suit for rent for the fasli.** A landlord tendered patta twice to his tenant, the second tender being made two months after the first. In an action by the landlord in the Revenue Court to enforce acceptance of the second patta, the Revenue Court held that the second tender made more than a month after the first with a view to taking proceedings under section 9 of the Madras Rent Recovery Act, was not legal. In a suit in the Civil Court by the landlord under section 7 of the Rent Recovery Act to recover rent for the fasli on proving the second tender:—*Held*, that the decision of the Revenue Court even if it amounted to

a decision that there was no proper tender of patta, would not operate as *res judicata*, as the Revenue Court had no jurisdiction to decide the suit brought in the Civil Court. *Vedachella Gramany v. Boomappa Mudaliar* 27 Mad., 65 distinguished. *Wallis & Miller J.*

Kidambi Venkatachariar v. Lakshmi Doss, 31 Mad., 62.

Small Causes Courts (Act IX of 1887), sec. 25—Where after the dishonour of a bill, the plaintiff indorsee being called upon to take it up, took it up and paid the indorsee, held, that his right to sue being clear, the High Court could not interfere in revision. *Wallis J.*

Alagappa v. Karrup, 3 M. L. T. 239.

Small Cause Court (Provincial) Art 18—*Claim for recovery of moveable property deposited with another for safe custody*.—Held, that a claim for recovering moveable property, or its value alleged to have been deposited for safe custody is a small cause suit and does not fall within article 18 of 2nd Schedule to the Provincial Small Cause Court Act IX of 1887, and therefore an appeal from the decree in such a suit (up to the value of Rs. 500) lies to the District Judge. *Shah Din J.*

Mussammat Kartar Devi v. Mussammat Surasti 3 P. W. R. 121.

——— **Art 31**.—*Suit for share of mesne profits wrongfully received*.—*Jurisdiction*.—A suit for the share of mesne profits alleged by the plaintiff to have been wrongfully received by the defendant falls under art 31 of the Provincial Small Cause Court Act, and is consequently not cognizable by a Court of Small Causes.

Munro J.

Venkoba Rao v. S. Mutha 18 M. L. J. 88.

Succession Act. Sections 212 and 234—*Amending Act VIII of 1903*—*Application to extend certificate outside the province*—*Revocation of the grant*—*Court Fees Act, Section 19 (c)*—The testator died possessed of certain property situated in the Province of Sind and a sum of money due on a Life Insurance Policy, the total value of which was under Rs. 10,000. The applicant applied for probate having effect throughout the Province of Sind, which was granted to her. The Life Insurance Company refused to pay the money on the ground that their head office was situated at Bombay and the probate was therefore, ineffectual. The applicant there after filed the present application for extension of the probate to the whole of India.

Held, that the probate could not be extended, as the preliminaries required by Act VIII of 1903 had not been complied with. The applicant was,

however, entitled to have the grant annulled under section 234, Explanation 4 of the Act, to enable her to apply for a fresh grant in the proper form, which will be exempt from further Court fee under section 19 (c) of the Court Fees Act.

Hagward J. C.

In re Elizabeth A. DeSouza 1 Sind L. R. 177.

Surety of Guardian—*Liability Contract Act sec. 128—Property not specified in the application for appointment of guardian, dealings with Guardians and Wards Act sec. 35—Assignment of bond, if must be in writing—Mistake and misrepresentation, if ground for avoiding bond—Minor—Estoppel.*—When the bond executed by a surety on the appointment of the guardian of a minor's properties under Act VIII of 1890 did not impose any limits.

Held—That his liability extended to the guardian's dealings with properties other those specified in the petition for the appointment of the guardian. The liability of the guardian extends to profits actually received but for his gross and wilful default. He is not liable for the profits of property in the wrongful possession of a stranger.

Mitra & Oaspersz J. J.

Sarat Chandra v. Rajoni Mohan 12 C. W. N. 481.

Transfer—*For Illegal purpose—Suit to recover possession by transferor—Onus of proof.* Where the owner of property transfers it is another for an illegal purpose and such purpose is not carried into execution, neither the vendor nor his heirs can succeed in a suit to eject the vendee in possession without proving that the purpose never got beyond the stage of the intention. In such a case section 31 of the Indian Trusts Act of 1882, throws the burden of proof upon the plaintiff, and the maxim "in pari delicto potior est conditio possidentis"—applies.

Raghu Atmaram v. Purshotam, 4 Nag. L. R. 26.

———*Transferee for consideration without notice—Charge for maintenance of Hindu widow declared by decree—Constructive notice—Vendor and purchaser.*—In 1884 a decree was passed in favour of Respondent No. 1, who was the widow of Respondent No. 2's brother, declaring a charge on the property in hands of Respondent No. 2, for her maintenance. In 1891, the same property was sold in execution of a money-decree against Respondent No. 2, and purchased by one G. who resold the same to Appellant in the same year, and who remained in possession till 1904. In 1904, Respondent No. 1 applied for an attachment against the property, alleging that till 1901 she had received her maintenance from Respondent

No 2, and that it had remained in arrears for 3 years. The attachment having been raised, she brought the present suit under Sec. 283, C. P. C., for declaration.

Held, that the appellant was bound by the charge created against the property by a decree of the Court, and that he must be presumed to have notice of the charge. *Kuloda Parsad Chatterj vs. Jogeshar Koer*, 194 followed.

Lucas & Hayward J. C.

Tejumul v. Mussamat Jasotan, 1 Sind. L. R. 134.

Transfer of Property Act, S. 89—Limitation Act, Art. 179—Application under s. 89 of the Transfer of property Act is an application for execution and s. 235 of the Code of Civil procedure applies to it—Unverified application substantially in accordance with law sufficient to save limitation. An application for an order absolute under section 89 of the Transfer of Property Act, is an application for execution of the decree and is subject to the provisions of section 535 of the Code of Civil Procedure and falls within article 178 or 179 of schedule II of the Limitation Act. Such an application, when defective, cannot be treated as a mere step in aid of execution, neither can it, when no notice is prayed for or issued, be treated as an application for issue of notice under section 248, which, as a step in aid of execution, will save the bar of Limitation. When such an application unverified but filed with the decree does not fully comply with the requirements of section 235 of the Code of Civil Procedure, and is defective only in minor particulars which can be easily gathered from the decree filed therewith, it may be treated as substantially an application for execution in accordance with law, sufficient to save limitation under article 179 of the Limitation Act.

Wallis & Miller J. J.

Ramayyan v. Kadir Basha Sahib, 31 Mad., 68.

—s. 90—*Transferee decree holder cannot bring to sale property which the decree-holder could not bring to sale under section 99 of the Transfer of Property Act.* A transferee decree holder is only entitled, under section 232 of the Code of Civil Procedure, to execute the decree in the same manner and subject to the same conditions as if the application were made by the original decree-holder, and under section 233, he holds the decree subject to any equities which the judgment-debtor might have enforced against the original decree holder.

A transferee decree-holder cannot in execution bring to sale property, which the original decree-holder is prohibited from bringing to sale by Section 99 of the Transfer of Property Act. *Ohhagan Guman, v. Lakshman Daydu*, 9 Bom. L. Rep., 728 followed. *Chundra Nath Dey v. Burroda Shoonidury Ghose*, 22 Calc., 813 approved. *Bank Bal v. Manni*

Lal, 27 All., 450 dissented from.

Benson & Wallis J J.

Jivarathnam Mudalivur, v. Srinivasa Mudaliar, 31 Mad., 33.

———**Secs. 99, 67, 109—Mortgage—Attachment by mortgagee—Application—Suit.** Section 99 of the Transfer of Property Act contemplates attachment by judgment-creditor (even if he be a mortgagee) and he is entitled to do so by an application for execution of the decree.

Jenkins C. J. & Batchelore J.

Nathubhai v. Bai Ujam 10 Bom. L. R. 274.

———**S. 116—"Consent" Holding over—Position of tenant holding over and his representatives at sufferance—trespassers—Limitation Act, Art. 139, 144, C. P. C. Secs. 281, 283—Sec. 116** of the Transfer of Property Act which enables the lessor or his representatives by his assent to convert a tenant by sufferance into a yearly or a monthly tenant, does not enable him to convert the representative of a tenant by sufferance into such a tenant by a mere assent on his part, without the consent of such representative.

If a tenant by sufferance dies and his representative holds on, he holds as a trespasser. *Krishnaji v. Antuji*, 18 Bom. 256 distinguished.

The representatives of a tenant by sufferance who enter after his death are not tenants within the meaning of art 139 of the Limitation Act; and a suit against them is governed by art. 144.

White C. J. & Wallis J.

Vedapalle v. Drovannaraju 18 M. L. J. 26,

Will—Will of Illiterate person—Proof of knowledge of contents of will purporting to bear the mark of illiterate testator. Those who propound the will of a person who can neither read nor write must prove affirmatively that the testator knew and approved of the contents of the will. In the case of an illiterate person something more is required than proof that the executant made his mark on the document. Knowledge of the document cannot be referred from the fact that he marked the document.

Chamier J. C.

Ram Prasad v. Jokhu, 11 O. C. 20.

———**Copy—Letters of administration—Evidence Act, s. 63.** The original of a will had been deposited as registered in Scotland. The applicant applied for administration of copy of will proved abroad annexed. The document produced was a copy certified under the hand and the seal of a Notary public to be a true copy of the original granted by the Assistant of the Register Deeds. It did not purport to be a copy made from the will itself nor did it bear any certificate that it had been compared with the original. *Held* that it would not be admissible under s. 63 of the Evidence Act.

Moore J.

Re Adam Whyte, 14 Bur. L. R. 33.



The Hon'ble Mr. Justice Basil Scott, Bar-at-Law.

Born 1859. Appointed Chief Justice - April 1908.

Photo by Bourne & Shepherd.

Vaidya Bros.' Press.

THE LAWYER.

1st JUNE 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL)

Adverse Possession—Acquisition of title—Nature of possession—A question of fact—Jurisdiction on appeal. Where the plaintiff claimed title on adverse possession for more than twelve years.

Held, that the question whether the possession was of such kind as to enable the plaintiff to acquire a title is a question of fact and the District Judge was entitled to decide in appeal, on the character of the possession.

White C. J. & Miller J.

Srinivasa v. Ramasawmy, 3 M. L. T. 299.

Agra Tenancy Act, S 32—Expropriatory holding—Suit for possession of an expropriatory holding. The plaintiffs sued to recover possession of one half of an expropriatory holding, and added a prayer for "any other relief which might in the opinion of the Court be deemed just and proper." *Held* that the suit for possession of half of the expropriatory holding would not lie, being opposed to Section 32 of the Agra Tenancy Act, 1901, but that, on the finding that the plaintiffs' share in the holding was one half, the plaintiffs were entitled to a decree declaring their right to a half share.

Bannerji & Aikman J. J.

Ashiq Husain v. Asghari Begam, 30 All. 90.

———**Ss. 177, 199, 200—Question of proprietary title—Appeal—Civil and Revenue Courts—Jurisdiction.** When a Revenue Court, under the powers conferred on it by section 199 of the Agra Tenancy Act, 1901, decides a question of proprietary title it becomes for the moment a Civil Court; an appeal lies at the instance of either party to the District Judge, and if such an appeal is wrong'ly preferred to and decided by a Commissioner, such decision will have no effect in preventing the Revenue Court's decree from becoming final.

Knox C. J. & Richards J.

Genda v. Sukh Nath Rai, 30 All. 25.

———**S. 199 (a)—Limitation—Defendant referred to Civil Court—**
Limitation Act, article 120. When under section 199 of the *Agra Tenancy Act, 1901*, an order is passed by a Revenue Court directing the Defendants to file a suit in a Civil Court within the time limited by that section, the ordinary period of limitation is thereupon suspended and the special period provided by the Tenancy Act is substituted.

The defendant filed a suit in the Civil Court within three months. It was decided against them. They appealed and in appeal withdrew their suit with liberty to bring a fresh suit.

Held, that the fresh suit, filed after the expiry of the period limited by the order of the Revenue Court, was barred, and the defendants could not fall back upon the provisions of the Indian Limitation Act, 1877.

Dillon J.

Banwari Lal v. Musammatt Gopi, 30 All. 44.

———**S. 201—Evidence Act, section 4—Presumption—Record of plaintiff's name as a co-sharer.** *Held* that the presumption enjoined by S. 201, clause (3) of the *Agra Tenancy Act, 1901*, is not conclusive, but may be rebutted by evidence offered to the contrary.

Stanley C. J. & Burkill J.

Dhanka v. Umrao Singh, 30 All. 58.

Animals—Wild, Elephant—Escape and recapture—Property of original owner when ceases.—An elephant after having been for a long time in a state of domestication strayed from its owner but was recaptured by another person and resumed its domestic habits on being recaptured. *Held*—That this was conclusive proof that the animal was not wild and that the owner's property in it never ceased.

Whether in any case an elephant which escaped from a life of domestication was wild or not must be decided upon the circumstances of the case; one test is the *animus revertendi*, and another, whether on recapture the animal had or had not to be treated as a wild animal.

Stephen and Holmwood J. J.

Mahadav Mehanata v. Balaram Gogain 12 C. W. N. 547.

Appeal—Parties—Estoppel—decree in favour of a non appealing plaintiff.—The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in

second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit *Farzand Ali Khan v. Bismillah Begam*, 27 All. 23 followed.
Bannerji & Aikman J. J.

Lohre v. Deo Hans, R. 30 All. 48.

——— *Order of remand—after it is carried out—maintainability of.* When an order of remand has been carried into effect before the filing of an appeal against that order, the appeal is not maintainable.

Aikman & Karmat Husain J. J.

Gulzari Mul v. Kabir-un nisa 5 All L J. 270.

——— *Succession certificate Act, sec. 19—Agent to the Governor of Vizagapatam.*—An appeal lies under sec. 19 of the Succession Certificate Act from the order of the agent to the Governor of Vizagapatam. *Chakrapani v. Varakalanma* 18 Mad. 227 Dissented from

Wallis & Munro J. J.

Babubabendrani v. Babubabendran 3 M. L. T. 264.

——— *Letters Patent of the High Court Sec. 15—Order refusing to stay execution of a decree—Impossibility of restoring status quo—Whether appeal lies.*—Held that the impossibility of restoring the parties to status quo, may or may not be good ground for granting a stay, but it does not render the order refusing the stay, a judgment, and no appeal lies from such order. *Srimanta Raja Yarlagadda Durga Prasad v. Srimanta Raja Yarlagadda Mullikarjuna* 24 Mad. 358 followed White O. J. Miller J.

Kodiba v. Syed 3 M. L. T. 307.

——— *Plaintiff's claim against one defendant dismissed—Plaintiff not appealing—Appeal by other defendant—Power of Court to pass decree against successful defendant.* Where the 1st Court has decreed plaintiff's claim only against one or more of several defendants, and Appellate Court, simply on appeal by the unsuccessful defendant or defendants, and without a cross appeal on behalf of plaintiff has no jurisdiction to disturb that portion of the 1st Court's decree which is in favour of the successful defendant or defendants. Followed P. R. (Civil) No. 46 of 1892.

Held also that a Court has no jurisdiction to award costs of one successful defendant against another unsuccessful in plaintiff's claim.

Kensington J.

Jawahr Sing v. Amin Chand, 3 P. W. R. 216.

——— *Conditional decree for foreclosure—Refusal to make decree absolute.* Whereby a conditional decree for foreclosure the mortgage-money

is made payable by instalments and the Court at any time refuses to make the decree absolute, holding that all instalments due to date have been paid or deposited for payment to the mortgagee, the order of refusal is a decree and as such is appealable under S 540 of C. P. Code.

Pundurang v. Rambhandra, 4 Nag L. R. 55.

Arbitration—*Award set aside by Munsiff—Decision on the merits—Appeal—Award restored by the District Judge—Jurisdiction.* Held, that on appeal the District Judge can go behind the decision of the Munsiff and decide as to the propriety or otherwise of his decision, setting aside an award.
Boddam & Sankaran Nair J. J.

K. Achuthaya v. N. S. Thimmayya, 3 M. L. T. 315.

Arbitration Act. (10 of 1899) S. 19—*Application to stay proceedings pending arbitration*—Section 19 of the Arbitration Act only applies where there been a submission to arbitration before the commencement of legal proceedings.
Madan C. J., Stephen & Woodroffe. J. J.

Ramjidas Poddar v. Howe, 35 Calc. 199.

Assignment—*By one co-owner—Other co owner not objecting—Assignment of whole debt due to the shop—Validity of.* Where a co-owner assigned the whole debt due to the shop and the other co-owner who was made a party to the suit did not question the assignment.

Held that the assignment was good for the whole amount. *Wallis J.*

Malai v. Royar, 3 M. L. T. 294.

Benamidar—*Suit for sale on a mortgage—Decree giving benamidar a right to redeem—Right to redeem not availed of—Subsequent suit for redemption by alleged beneficial owner barred.* A decree for sale on a mortgage was passed giving a right of redemption to a puisne mortgagee. The puisne mortgagee did not redeem and the decree became absolute. Held, that no subsequent suit for redemption would lie by a person alleging that he was the real puisne mortgagee and that the person whose name appeared in the decree as puisne mortgagee was merely a benamidar.

Aikman J.

Kanis Fatima v. Wall-Ullah, 30 All. 30.

Benami transactions—*Alienation to defraud creditors—Fraud not carried into effect—suit against benamidar for sale of property conveyed nominally.*—Where A, with a view to defraud his creditors transfers his property benami, in favour of B, but the fraud has not been carried into effect.

Held that a suit by C. against B., for specific performance of a contract to sell such property can be successfully resisted by A on the ground that the transfer of the property in the name of B was a mere benami transaction.

Wallis & Sankaran Nair J. J.

Munisami v. Subbarayar 3 M. L. T. 244.

Bengal Land Registration Act (VII of 1876, B. C.)—Action of revenue authorities under it—Competency of Civil Court to direct such action—Where the suit was rently to obtain an order from a Civil Court which could bring about a reconsideration of the order passed by the revenue authorities under the Land Registration Act (VII of 1876 B. C.) in regard to the registration of the name of the plaintiff as a co-transferee. with that of another, the High Court dismissed the suit holding that the Civil Court was not competent to direct the action of the revenue authorities under that act (VII of 1876 B. C.) Their Lordships of the Judicial Committee of the Privy Council dismissed the plaintiff's appeal and concurred in the reasons stated in the judgment of the High Court.

P. C.

Chhatrupat v. Maharaj Bahadur Singh 10 Bom. L. R. 262—18 M. L. J. 125.

—**Ss. 52, 55, 62.—Reference to Civil Court, conditions of—“Possession,” meaning of, in S. 55—Mahomedan Widow—Dower, claim for—Jurisdiction—Revision by High Court, power of.** When a person alleges that he has by succession acquired an interest in an estate and is in possession of such interest, and on this basis, seeks registration of his name, if his claim is disputed by any other person who sets up a conflicting claim in respect of the same interest, the Collector must enter into the question of possession. If he finds that possession is with the applicant and that the title set up is also proved, he may enter his name in the register. If, however, it is not proved to his satisfaction that any person is in possession of the disputed interest, he may either determine summarily the right to possession and deliver possession accordingly or he may make a reference to the Civil Court which may determine summarily the right to possession and deliver possession accordingly. When a Mahomedan widow has obtained possession of the undistributed property of her deceased husband lawfully and without force or fraud, she is *prima facie* entitled, as against the other heirs of her husband to retain possession until her dower-debt, or any portion of it which is due and unpaid, is paid. The jurisdiction which the Civil Court acquires upon a reference to it under S. 55 of the Land Registration Act is that of a Civil and not of a Revenue Court, and its decision is subject to revision by the High Court.

Brett & Mookerji J. J.

Umatul Mehdi v. Kuleum, 35 Cal. 120.

Bengal Tenancy Act (VIII of 1885) Ss. 54 (3), 61, 67.—
Interest—Arrear of rent—Tender—Effect of valid tender kept good but improperly refused—Deposit in Court, omission to make—Landlord and tenant. Where in a suit for rent it was proved that the defendants tendered the rent to the plaintiff; that on his refusal to accept it they sent him by money order, instalment by instalment, all the rents as they fell due, but the plaintiff systematically declined to accept the money; that, when the suit was about to be instituted, their pleader again tendered the rents, first to the plaintiff's pleader and then to his *naib*, and on their declining to accept the money it was deposited in Court before the suit was instituted:—*held*, by the Full Bench (RAMPINI, A. C. J. and MITRA J, dissenting), that there was a valid tender which was kept good and that it was not necessary for the defendants to follow up the tender by a deposit of the rent under section 61 of the Bengal Tenancy Act in order to stop interest from running under section 67 of the Act; that rent, which had been tendered with the intention of paying it to the person to whom it was due at the time when it was due, but which was without good cause not received by the person to whom it was due and to whom it was tendered, could not be regarded as an arrear of rent within the meaning of section 54(3) and section 67 of the Act; that section 61 was an enabling and not a mandatory section and that it did not deprive the tenant of the right which, as a debtor he had under the general law by which a valid tender which is kept good stops the the running of interest from the date when the tender is made. *Jagat Tarini Dasi v. Naba Gopal Chaki*, 34 Calc. 306 approved. (1907).

F. B.

Kripa Sindhu Mukerjee v. Annada Sundar, 35 Calc. 54

———S. 65, 159, 188—*Co-sharers—Right of one co-sharer to sue for the whole rent making defendants his co-sharers who refuse to join in the suit as plaintiffs—Right to bring whole tenure to sale—Agreement to pay rent to co-sharers separately, effect of.* By the express terms of the Bengal Tenancy Act (VIII of 1885) in the event of rent being unpaid, the owners of the zemindari interest are entitled by suit under that Act to bring a *patni* to sale with the consequences prescribed by the Act. And it is a general rule—a rule not derived from the Bengal Tenancy Act but from the general principles of legal procedure—that a sharer whose co-sharers refuse to join him as plaintiffs can bring them into the suit as defendants sue for the whole rent of the tenure. Section 188 of the Act does not preclude such a suit; the filing of a suit not being a thing which the landlord is, under the Act “required or authorized to do,” but an application to the court against an alleged grievance, which the plaintiff is entitled to submit, not by reason

of any provision in the Tenancy Act, but under the general law. Although an agreement, expressly proved or implied by the conduct of the parties, for the payment of rent to co-sharer landlords separately, may establish the right to sue separately for the shares of rent receivable by the separate shareholders, yet such an agreement merely affects the right to sue separately for rent and in no other respect modifies the terms of the holding. The right, therefore, to bring the tenure to sale for arrears of rent remains intact, and also the right of one co-sharer to sue making his co-sharers defendants when they refuse to join as plaintiffs.

P. C.

Pramada Nath Roy v. Ramani Kanta Roy 35, Calc 331.

———S. 69.—*Application of.* Section 69 of the Bengal Tenancy Act is applicable upon the assumption that the rent is taken by appraisement or division; the only matter in controversy between the parties is as to the quantity, value or division of the produce; the section ceases to be applicable when there is a *bona fide* dispute as to the character of the holding itself.. *Nakheda v. Ripa*, (1898) 4 C. W. N. 239, followed.

Mookerjee & Casperz J. J.

Mir Tapurah v. Gopi Narayan, 7 C. L. J. 251.

———Ss. 108, 109, sub-sec. (3).—*Record of Rights—Settlement Officer, power of—Revision of entries—Objection by tenants—Second appeal—Settlement of rent.*—Section 108 of the Bengal Tenancy Act does not warrant the Settlement Officer in revising his entries as to *mal* lands in the record-of-rights. The Act gives to tenants ample opportunity for the correction of mistakes in the record-of-rights; but the tenants to avail themselves of the opportunity must make an objection to the draft-record, or institute a suit under s. 106 of the Act after the final publication of the record. No second appeal lies from the decision of a Settlement Officer settling rent under s. 109 of the Bengal Tenancy Act.

Maclean C. J. & Geidt J.

Shambhu Chandra Hazra v. Purna Chandra Pal 35 Calc. 176.

———S. 167.—*Notice, proof of service of—Notice, validity of—Order sheet of the proceedings, entries in, evidential value of.* In a suit for recovery of possession the plaintiff can succeed only on the title as it stood on the date of the institution of the suit.

Until the notice has been properly served under S. 167 of the Bengal Tenancy Act upon the incumbrancer the incumbrance subsists.

It is obligatory on the purchaser to show that the notice under S. 167 had been served in the manner prescribed. The entries in the order-sheet

are not *prima facie* evidence against the incumbrancer that the notice was served. The purchaser who relies upon the service of notice must prove it either by the production of the person who served the notice or by any other means recognized by law; and if a question arises as to the validity of the notice, it must be shown that it was a valid notice and was signed by a competent officer as required by cl. (1) of S. 167 of the Bengal Tenancy Act.

Mookerjee & Casperz J. J.

Radhay Koer v. Ajidhya, 7 C. L. J. 263.

Boundaries—*Demarcation of village boundaries Accepted by settlement authorities and agreed to by defendants, suit by Government to impugn correctness of—Secretary of State for India in Council, suit for possession of land by.*—In December 1866 it was decided, as between Government on the one hand and the defendants or their predecessors on the other, that the whole of the town of Tanda should be regarded as Nazul property with the exception of the hamlet of Nawagunj. This decision was upheld in appeal in 1871. In March 1871, the Deputy Commissioner passed an order directing that the boundary should be demarcated. An *amin* was appointed to demarcate and he submitted a report, together with a map in which the boundary was shown. This demarcation was accepted by the settlement authorities and the Settlement papers were drawn up accordingly. The demarcation of the boundary was accepted as correct by the defendants or their predecessors in title under a *razinama* dated the 29th May, 1872. The defendants or their predecessors had been in possession of the land, which was demarcated as their property, ever since 1872, and this area of land was included in the *had-bast* village M which was settled with the defendants and their co-sharers. In 1904, the Government brought a suit for possession of certain lands, alleged to have been wrongly included in the hamlet of "Nawagunji" and impugned the correctness of the proceedings and demarcation which had taken place in 1872.

Held that, having regard to the circumstances of the case and the conduct of the parties through a long period of more than 30 years, the plaintiff was bound to abide by the demarcation proceedings of 1872 and could not be allowed to impugn their correctness

Griffin & Evans J. C.

Lachman Parshad v. Secretary of State 11, O. C. 30.

C. P. Tenancy Act, S. 41—*Power of avoiding a transfer when exerciseable.* The power of avoiding a transfer made by an absolute occupancy tenant which is given by sub-section (7), Section 41 of the Central Provinces Tenancy Act, 1898, must be exercised either by all the landlords acting together or by an agent authorised to act on their behalf whose

authority has not been revoked with respect to the particular transfer in question. If some members of the landlord body accept and the others reject the transferee, no suit to avoid the transfer is maintainable.

Ramji Patel v. Syed Nur, 4 Nag. L. R. 45.

———S. 92—*Suit between landlord and tenant—Jurisdiction of Civil Court.* A person claiming to be a tenant was evicted by the malguzar and the Tahasildar under S. 92 of the Central Provinces Tenancy Act. The malguzar thereupon instituted a suit in the Court of a Munsif who was not also a Revenue Officer to evict the said person on the ground that he was a trespasser, his sub-tenancy having determined owing to the occupancy tenant under whom he had held having surrendered his tenancy. It was held by the District Judge in appeal that the Munsiff had no jurisdiction to try the suit, the effect of the Tahsildar's order being to make the suit one as between landlord and tenant, *Held*, that the Tahsildar's order in no way affected the nature of the suit; it was not one as between landlord and tenant, and that the Munsiff had jurisdiction.

Mt. Dulbasa v. Khalaksing, 4 Nag. L. R. 63.

Cess Act (Beng. (IX of 1890,) Ss. 4, 5, 6—*Cess, Assessment of Annual value of land—Rent.* A *mela* or fair was held yearly on lands included in the holdings of agricultural tenants, at a time when they were not used for agricultural purposes, by certain persons, called *fakirs*, who executed in favour of the zemindar a *kabuliat* agreeing to pay an annual *ayari chandina jama* for the right to hold the fair; the *fakirs* gave the right to hold the fair to *ijaradars* who derived profits by levying tolls on sellers of cattle and other animals, at a certain rate per animal, from stall-keepers at so much per stall and from certain other persons frequenting the fair:—*Held*, that the profits were not paid by tenant to landlord, nor for the use and occupation of land, and, consequently, were not rent, and did not fall within the definition of "annual value of land" in section 4 of the Cess Act; and that an assessment of cesses made by the Collector on the basis of such profits was illegal and *ultra vires*. *Held*, also, that the fact that the profits were not exempt from income tax was no bar to cesses being assessed thereon. *Manindra Chandra Nandi v. Secretary of State for India*, 34 Calc. 257, approved *Umed Rasul Shaha Fakir v. Anath Bandhu Chowdhuri*, 28 Calc. 637, disapproved in part. *Held* by BRETT, WOODROFFE and MOOKERJEE J J.. that the *fakirs*, the *ijaradars*, the cattle-sellers and stall-keepers were mere licensees and had no interest in the land.

(F. B.)

Secretary of State for India v. Karuna Kanta Chowdhry, 35, Calc. 82

Chaukidari Chakran Lands—*The Village Chaukidari Act (Beng. VI of 1870), s. 51, construction of*—Right created by the chaukidar, effect of. The words "subject to all contracts heretofore made in which such land may be situate" in section 51 of Act VI (B. C.) of 1870, refer to contracts in the nature of putnis or mokararis created by the zemindar himself in respect of the village in which the chaukidar's land or any portion of it is situate, and do not reserve the rights created by the chaukidar, whose land is resumed in favour of a third person.

Krishna v. Bhagwan Das, 35 Cal. 185.

—————*Resumption by Government—Suit for possession—Village Chaukidari Act (Bengal Act VI of 1870) s. 51—Specific performance of contract, suit for.* Where come of the putnidars and the dur-putnidar brought a suit making the remaining putnidar a defendant, to recover possession of chakran lands found to be a part of the putni:—*Held.* that this was not an action for specific performance of contract, but for possession of chakran lands included in the Putni. *Ranjit Singh v. Radha Charan Chandra*, 34 Calc. 564, dissented from.

Maclean C. J. & Coxe J.

Banwari Mukunda Deb v. Bidhu Sundar Thakur, 35 Calc. 346 = 7 C. L. J. 409.

Civil Procedure Code, S. 13—*Res judicata—Matter directly and substantially in issue.* The Court is not precluded under section 13 of the Civil Procedure Code from trying an issue whether the rent of the holding is payable entirely in cash or partly in cash and partly in kind, as it was not directly and substantially in issue in a previous litigation between the same parties where the substantial relief sought was a declaration that the appraisement made by the Collector under S. 69 of the Bengal Tenancy Act was invalid.

Mookerjee & Casperz J. J.

Mir Tapurah v. Gopi Narayan, 7 C. L. J. 251.

—————**S. 13**—*Res judicata—Decision of Nagpur no res judicata in Berar.* No matter decided by a Court in British India can be a *res judicata* under S. 13 of the Code of Civil Procedure, as applied to Berar. The judgment of a Nagpur Court is in Berar a foreign judgment.

Syed Imam v. Mahomed, 4 Nag. L. R. 61.

—————**S. 28**—*Misjoinder—Guardian and Ward.* Where a ward sued the guardian for account and malversation of property of ward which was sold to some of the defendants and in the possession of other defen-

dants. *Held*, that there was no misjoinder of defendants or causes of action in impleading the guardian, the purchasers and possessors of the ward's property from the guardian in one suit as defendants.

Benson & Miller J. J.

Doraswamy v. Angammall, 3 M. L. T. 286.

———**S. 32—Adding parties—Practice.** Where a cause of action is shown to exist against the defendant originally impleaded but on the allegations made in the plaint, there appears also another person concerned in it the Court should at once make that person under S. 32 of the Civil Procedure Code, a co-defendant without raising an issue on that point and should not first rule out the claim against the original defendant and then hold that the Court could not allow the impleading of the other person on the ground that it would be a substitution and not an addition of a defendant.

Query.—Whether the Civil Procedure Code allows a fresh defendant to be substituted for a sole existing defendant against whom it has been found that there is no cause of action. Whether the notice under S. 424 Civil Procedure Code is necessary in case of adding under S. 32 of the same Code, a public Officer as a co-defendant in a case brought against the Secretary of State for India in Council. *Johnstone & Hurry J. J.*

Mrs. Fox v. The Secretary of State, 3 P. W. R. 200.

———**Ss. 43, 377—First suit for declaration of right and partition—Second suit for partition of joint property—Cause of action identical—First suit withdrawn—Second barred—Limitation Act, Art. 106—Suit for partition, a suit for a share in dissolved partnership.** The plaintiff brought a suit for declaration that certain property in Moradabad District purchased by the defendant in his name was purchased with the money belonging to the parties and taken out of the partnership business of which the parties were joint owners and for partition of the property. This suit was withdrawn without permission to bring a fresh suit as the parties referred the matter in dispute to arbitration. The arbitration fell through and the plaintiff brought this suit for partition of certain property situate at Naini Tal which had been purchased in the joint names of the parties. In the plaint, he alleged that the property at Naini Tal was purchased with the profits of the partnership business.

Held, that the cause of actions in both the suits were identical and the second suit was barred by S. 43 of the Code of Civil Procedure as the plaintiff ought to have included his present claim in the first suit.

Held, further, that the suit was barred by S. 373 of the Code.

Held further, that the suit was also barred by article 106 of the Limitation Act inasmuch as it was a suit for a share in the profits of a partnership which had been dissolved more than three years before the suit.

Aikman & Karamat Husain J. J.

Naiz Ahmad v. Abdul Hamid, 5 All. L. J. 278.

———**S. 44**—*Injoinder of causes of action—possession of property and mesne profits.*—On the death of a mahant of a religious institution the plaintiff was appointed as his successor by a community competent to elect him. The plaintiff brought the present suit for possession of immoveable property belonging to the institution and sought to set aside a mortgage executed by his predecessor. He alleged that defendants Nos. 1 and 2 had wrongfully taken possession of the property in dispute, and that they had obtained for themselves a certain sum of money by letting the said property to some of the other defendants, and claimed to recover the amount.

Held, that the plaintiff's claim was not bad for misjoinder of causes of action for the relief sought was for possession of property and the mesne profits realized.

F. B.

Basheshri Lal v. Bhai Natha 9 P. L. R. 313.

———**sec. 59**—*High Court Rule 162—Practice—Inspection of documents not referred into the plaint—Right of defendant to inspect last documents before filing his written statement.*—Section 59 of the Civil Procedure Code requires a plaintiff to annex to his plaint a list of documents on which he intends to rely at the hearing.

It has heretofore been the practice not to order inspection of documents other than those referred to in the plaint or relied on in the list annexed to the plaint till after the written statement is filed.

This is not an inflexible rule in all cases for there may be many cases where it would be imperative to order the plaintiffs to produce and give inspection to the defendant before he has filed his written statement, of a document or documents which they may not have mentioned in their plaint or enumerated in the list of documents annexed thereto.

Davar J.

Khetsidas v. Narotumdas 32 Bom. 152.

———**s. 97**—*Application of*—When a plaint is returned for amendment the proper course is to give another date for next hearing of the case after the day by which amended plaint is to be refiled; s. 97, of the

C. P. Code is applicable only to cases in which plaintiff fails to file Tulbana for the first hearing. *Chevis J.*

Shahabdin v. Anjumani—Naumanna 3 P. W. R. 238.

———s. 198-202—*Judgment—Time for its dating and signing—Parties can compromise both before and after judgment is delivered—*Held, that, when a Judge signs and dates a Judgement and the parties lawfully compromise the case and the compromise has been brought to his notice before he actually delivers the Judgement to the parties in open Court, the Judge has no power to decline to alter it, but is rather bound to decide it in accordance with the terms of the compromise.

Held, also, that it is illegal to sign and date a judgment before it is actually delivered in the presence of the parties in open Court.

Held, further, that evenafter a complete legal judgement there is no prohibition for the parties to come to any lawful terms they wish in respect of the subject matter in dispute. *Robertson J.*

Guranditta v. Radha Kishen 3 P. W. R. 240.

———s. 208—*Construction of decree—specific moveable property execution against debtor not in possession.*—In a suit for recovery of three, fourths of an estate consisting of moveable and immoveable (valued at Rs. 6800) property a decree based on the compromise, was passed in the following terms. "It is ordered that the decree by consent for three-fourths of Nur Bakhsh's estate, both moveable and immoveable property, be given in plaintiff's favour. Plaintiff pays to Defendants Rs. 5000 for expenses &c. No costs allowed. Rs. 5000 paid into Court.

Held with reference to the compromise and the plaint, that this decree sufficiently complies with the provisions of section 208 of C. P. C. and under it the decree holder can recover three-fourths of the moveables or its value, Rs. 6800 by executing it as provided under sec. 259 of the same Code against any of judgment debtors it being immaterial whether any of them has or has not possession of the moveable property decreed.

Robertson & Shah Din J. J.

Railha Mal v. Imam Bux 3 P. W. R. 225.

———s. 232—*Decree for possession of immovable property—Sale of property decreed—Right to execute decree.* If a decree-holder holding a decree for possession of immovable property sells portion of such property, the sale does not, without express provision to that effect give the purchaser any right to execute the decree himself.

Knox & Richards. J. J.

Hansraj Pat v. Mukhraji Kunwar, 30 All. 28,

———**Ss. 244 and 285—Execution of Decree—Sale in execution of inferior court by order of court of higher grade—Second appeal where decree of lower court executed by a higher court.** The respondent obtained a decree against the appellants in the Court of the Munsif in execution of which certain property of the appellants was attached. The Munsif submitted the usual sale statement in order that the sale of the property, which was ancestral, might be sanctioned, but, before the sanction reached the Munsif's Court, the property was attached by the order of the Subordinate Judge in execution of a decree obtained in his Court by a third party. The Subordinate Judge purporting to Act under s. 285 of the Code of Civil Procedure sent for the file of the execution proceedings from the Munsif's Court and caused the property to be put up for sale in execution of the Munsif's decree.

Held that, having regard to the provisions of s. 285 of the Code of Civil Procedure, the order of the Subordinate Judge was illegal; he ought to have sold the property in execution of the decree passed by himself and ought not to have executed the decree passed by the Munsif.

Held further, that the proceedings before the Subordinate Judge were under s. 244 of the Code and a second appeal was admissible.

Chamier J. C.

Kalka Prasad v. Saived Akbar Ali 11. O. C. 410.

———**S. 244—Purchaser at Court sale—Whether representative of decree-holder.** Where a purchaser at a Court auction did not purchase from the decree-holder and did not derive title from him.

Held, that where the question is the right of a purchaser at Court auction to possession as against the judgment-debtor, the purchaser is not the representative of the judgment-creditor within the meaning of S. 244 of Civil Procedure Code. *Kishori v. Chunder*, 14 Cal. 644, followed, *Sudhu v. Husain*, 28 Mad. 87: distinguished; *Manik v. Rajagopala*, 30 Mad. 507 dissented from.

White C. J. & Miller J.

Krishna v. Sarasvatula 3. M. L. T. 306.

———**S. 244—Appeal—Order refusing to grant a sale certificate auction—Purchaser—Party—Execution, relating to.** No appeal lies against an order refusing to grant a certificate of sale to the decree-holder, auction-purchaser, the question determined being not one relating to the execution, discharge or satisfaction of the decree. The auction purchaser being also a decree-holder is a party to the suit within the meaning of S. 244 of the C. P. Code.

Hill & Rampini J. J.

Jagarnath Marwari v. Karticnath Pandey, 7 Cal. L. R. 436.

(An old case of 1900.)

———**Ss. 244, 278 to 283—Decree against father (deceased)—Execution against the sons—Objection that property was wakt—Order—Proper procedure.** Where in execution of a decree against their deceased father, the sons pleaded that they were hereditary trustees of the wakt—

Held, that the Court could not go into the question under S. 244, Civil Procedure Code, that the procedure should be to investigate the chains under Ss. 278–283 and that the order passed therein cannot be challenged by an appeal but must form the subject of a separate suit. *Marigaya v. Haijot Sahib*, 23 Bom. 237, followed; *Lakshmanswami Naidu v. Rangamma*, 26 Mad. 31 and *Raja of Vizianagaram v. Danlivada Chelliah*, 28 Mad. 84, distinguished. *Boddam & Munro J. J.*

Budruddin Sahir v. Abdul Rahim Sahib, 3 M. L. T. 325.

———**S. 244—Execution of decree—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased.** Where the decree-holder himself purchases property at auction sale in execution of his own decree, but fails to obtain possession his remedy is by application under section 244 of the Code Procedure: he cannot bring a separate suit for possession. *Seru Mohan Bania v. bhagoban Din Pande*, 9 Calc. 602. and *Kishori Mohun Roy Chowdhry v. Chunder Nath Pal*, 14 Calc. 644, distinguished.

Stanley C. J. & Burkitt J.

Sheo Narain v. Nur Muhammad, 30 All. 72.

———**Ss. 244 and 583—Execution of decree—Reversal of decree on appeal, effect of—Separate suit, maintainability of.** Section 244 of the Civil Procedure Code does not apply in its entirety to proceedings had under section 583 of the Code for restitution of property taken in execution of a decree which is reversed in appeal.

Mittra & Cospersez J. J.

Matiram Marwari v. Ramkumar Marwari, 35, Calc. 265.

———**s. 258—Payment out of Court—Recognition by Court without certifying.**—If money due under a mortgage—decree under section 88 of the Transfer of Property Act is paid out of court and neither party takes steps to have it certified under section 258 of the Code of Civil Procedure the court executing the decree is precluded from recognising the alleged payment out of court. *Vaidhinadasamy* 28 Mad. 473 followed, *Hatim Ali* 8 C. W. N. 102 dissented from. *Aikman & Karamat Husain J. J.*

Hakim Singh v. Ram Singh 5 All. L. J. 272.

———**s. 266—Arrears of rent—suit by auction purchaser—Arrears of rent due under a sub lease which under the contract were made paya-**

ble to the lessor's zamindar constitute a debt due to the lessor which is liable to attachment and sale under section 266 of the Code of Civil Procedure.

Stanley C. J. & Burkitt J.

Laohmi Narain v. Kalyan Das 5 A. L. J. 265.

———**Sec. 266—Right to get profits in future years—Attachment.** The decree holders applied for attachment of profits then due to their judgment—debtor from the lambardar as well as profits which would accrue at a future date. Held that in the profits of future harvest, the judgment debtor had only a possible right to get a share, and this possible right was not liable to attachment having regard to the provisions of sec. 266 of the Code of Civil Procedure.

Aikman & Karamat Husain J. J.

Sher Singh v. Sri Ram 5 A. L. J. 251.

———**Sec. 276—Attachment of Judgment-debtor's property—Transfer of Property by the judgment debtor to the Plaintiff—subsequent transfer of same property to plaintiff by the judgment-creditor—Release of the latter rights by the plaintiff—Title—Estoppel.**—Where a plaintiff derived his title to the property both from a judgment debtor and from the judgment creditor but released the rights derived from the latter, reserving his rights under the former, *Held* (1) that the transfer by the judgment creditor impliedly warranted that he had a good title to the property and the plaintiff having accepted a title on the footing that the title under the execution proceedings was good, was estopped from disputing the same; and, (2) that under the provisions of sec. 276, Civil Procedure Code the plaintiff acquired no rights under the transfer from the judgment-debtor which could prevail against the attachment and that his reservation of those rights gave him title as against the parties who claimed by sale from the judgment-creditor.

White C. J. & Sankaran Nair J.
Marvadi v. Sri Rajali 3 M. L. T. 295.

———**Sec. 287, cl. (c)—Execution Sale—Sale—proclamation Statement of value—Enquiry as to approximate value when to be made.** It cannot be laid down generally that in no case should any inquiry be made as to the value of judgment-debtor's property to be sold before issuing the sale proclamation. *Kashipersad Singh v. Jamunapersad Shahu* 31. Cal 122 commented on.

Where the decree-holder stated the value of the property to be Rs. 15,000, but the judgment debtor objected that the value was Rs. 150000 and the Court adopted the former valuation without any inquiry.

Held—That in the face of the discrepancy in the value as stated by the decree-holder on the one hand and the Judgement-debtor on the other

an inquiry as to the approximate value of the property was obviously necessary and should be held. *Woodroffe and Holmwood J. J.*

Mohan Tagare v. Hurruchchaud. 12 C. W. N. 543.

———**Ss. 310 A, 311, 320**—*Government rules 17 (XII)*—*Person whose immoveable property has been sold—One co-sharer right to apply—Deposit by one co sharer, pending an application to set aside the sale.* One of several co-shares of property which has been sold is a person" whose immoveable property has been sold within the meaning of S. 310 A. Civil Procedure Code, and has a right to apply to set aside the sale and that it is not necessary to join all the co-sharers to the application.

When a deposit is made by one of the co-sharers, it is the duty of the Collector to pass an order setting aside the sale and the fact that an application by the other co-sharer to set aside the sale on the ground of material irregularity, under S. 311 was pending is no bar to the making of the deposit and getting the sale set aside on that ground.

Stanley C. J. & Burkitt J.

Tuhi Ram v. Izzat Alli, 5 All. 253.

———**Sec. 331**—*Execution order directing plaintiff to take steps under sec. 331, Civil Procedure Code—Whether proper disposal.*—Held that an order to the plaintiff to take steps under sec. 331 of the Civil Procedure Code is not disposal of the petition for execution.

Wallis & Munro J. J.

Majety v. Rahim 3 Mad. L. T. 295.

———**Ss. 362**—*Parties—Death of sole appellant—All representatives not brought upon the record—Abatement of appeal.* The sole appellant, a Muhammadan, died pending the appeal, leaving him surviving a widow, two sons and two daughters. The two sons applied to have them selves brought on to the record as appellants, but did not ask that their mother and sisters should be made parties to the appeal. An application to that effect made by the respondents was not acted upon by the lower appellate Court. *Held* that it was the duty of the sons to have brought upon the record, either as appellants or respondents, the other representatives of their father, and as they had, not done so the appeal abated. *Ghamandi Lal v. Amir Begam,* 16 All., 211, followed.

Stanley C. J. & Burkitt J.

Hailar Husain v. Abdul Ahad, 30 All. 117.

———**S. 365**—*Death of sole plaintiff—Claim of one of the defendants to continue the suit as plaintiff—Abatement of suit.* The original

plaintiff sued for redemption of a mortgage executed by her father. She claimed as the only unmarried daughter of three, arraying as defendants, besides the mortgagee, her surviving married sister and the minor children of the second sister, deceased. During the pendency of the suit the plaintiff died. *Held* that the claim being personal to the plaintiff, the suit abated and that the surviving sister could not be permitted to carry on the suit in substitution for the original plaintiff. *Stanley C. J. & Burkitt J.*

Balak Puri v. Durga, 30 All. 49.

———**S. 368**—*Death of defendant—Time for joining his representatives—Dismissal of suit—Whether appeal lies.* Where in the course of an action the defendant died and the Munsiff dismissed the suit without giving sufficient time to join as defendants, the representatives of the deceased defendants.

Held, that the course taken by the Munsiff was not an order under S. 368 or any other Section of the Civil Procedure Code, and that the proceedings of the Munsiff amounted to a decree and an appeal lay to the District Judge. *Subbayya v. Samenadhayyar*, 18 Mad. 496, followed.

Boddam & Mitler J. J.

Muthu Alagappa Chetti v. Sella Pillai, 3 M. L. T. 327.

———**Ss. 368 and 582**—*Right of Plaintiffs—Respondents joint or several—No finding by the first Court—Procedure to be adopted—Permissive and not obligatory.* 19 persons joined as co-plaintiffs to have their exclusive right to fish in certain waters, declared; the Court the first instance decreed their claim, without giving any specific finding whether they were entitled to the right jointly, severally, or as members of a community. During the pendency of the appeal filed against them, some of them died, and the appellants (defendants) failed to join their legal representatives within the statutory period. The 1st Appellate Court held that the appeal against all the respondents had thereby abated.

Held, that the question whether the appeal abated against all the respondents or not, depended on a finding as to the capacity in which the plaintiffs claimed the right and the nature thereof. If they claimed the right jointly and as tenants-in-common the whole appeal would abate, but if they claimed a several right in their individual capacity or as members of a community, the appeal would abate only as regards the deceased plaintiffs. The proper course for the 1st Appellate Court would therefore be to hold that the appeal abates only as against the deceased respondents and to proceed to hear the appeal against the others, and if after considering the

nature of the right proved it holds that the appeal does not survive as against the others, then in that case to dismiss the appeal.

Held further, that section 30, Civil Procedure Code, is an enabling section, and a person who has a right in common with others may maintain an action for the establishment or enforcement of his right or he may sue on behalf of all the persons who have an interest in common with him, but there is nothing in the section debarring him from maintaining the action only for his own benefit.

Pratt & Hayward J. C.

Sumar v. Mahomed and others, 1 Sind L. R. 146.

———**S. 380, para 2**—*Security for costs—Minor plaintiff—Practice.* The words “such plaintiff” in the 2nd paragraph of S. 380, C. P. C. cannot be construed as applying to an infant plaintiff’s next friend.

In the case of infant plaintiffs, unless the circumstances are exceptional, they cannot be required to give security for costs.

While C. J. & Wallis J.

Rukmani Bai x. Lodd Govind Doss, 18 M. L. J. 155.

———**S. 380**—*Security for costs from a woman, suit for money includes a suit which results in a decree for money—Appeal lies against the order of a Judge sitting on the original side directing security from a woman—Letters Patent, cl. 15.* Suits which are not exclusively for money but which will result in a decree for money on the relief sought, come within the purview of S. 380 of the Code of Civil Procedure.

An appeal lies against an order passed by a Judge sitting on the Original side of the High Court requiring security from a woman under S. 380 of the Code of Civil Procedure.

Such an order is a judgment within the meaning of cl. 15 of the Letters Patent.

Jenkins C. J. & Batchelor J

Soonabai v. Tribhovandas, 10 Bom. L. R. 337.

———**Ss. 389, 390**—*Commission—Evidence—Evidence taken on commission on behalf of the defendant—Right of the plaintiff to refer to such evidence—Practice.* Regard being had to the provisions of Ss. 389 and 390 of the Code of Civil Procedure as also to the practice of the mofussil Courts, the deposition of a purdanashin lady taken on commission, although not tendered by the party on whose behalf it was taken, is yet admissible in evidence and can be referred to by the other side as a part of the record of the case. *Kusum Kumari Roy v. Satya Ranjan Das*, 30 Cal. 999, and *Hemanta Kumari v. Banku Behari Sikdar*, 9 C. W. N. 794, distinguished.

Holmwood & Sharfudin J. J.

Man Gobinda Chowdhuri v. Shashindra Chandra, 35 Cal. 28.

————S. 395—*Hindu Law—Partition—Preliminary decree—Fresh suit for partition.* Where a preliminary decree for partition of a joint family has been passed the Court is still bound to pass the final decree under S. 396, Civil Procedure Code, which it may do even without the application of the parties.

As it was still open to the plaintiff to obtain his share of the joint family property in the former suit, he could not bring a fresh suit for the partition of the joint family property. *Wallis & Sankaran Nair J. J.*

Togaram Appadu v. Togaram, 3 M. L. T. 328.

————Ss. 103 and 592—*Application for Leave to Appeal as Pauper—Verification of.*) An application for leave to appeal as a pauper under section 592 of the Code of Civil Procedure contained no schedule of any moveable and immoveable property belong to the applicant with the estimated value thereof, and was not verified in the manner prescribed by law for the verification of plaints. Following the decision of the Allahabad High Court in the matter of the petition of Inayat Beg, 1895 A. W. N. 35 it was held that the Court had no alternative but to reject the application.

Evans, J. C.

Muhammad Salamat-ul-lah v. Ram Jiawan (11 O. C. 19)

————Ss. 588 (470)—*Decree—Order—Appeal—Interpleader suit.*) Held that an adjudication upon the claims of defendants in an interpleader suit is a decree and appealable as such under section 540 of the Code of Civil Procedure and not under section 588 of the Code.

Bannerji J.

Maharaj Singh v. Chittar Mal, 30 All 22.

————Ss. 506—*Arbitration—Reference made orally, but reduced to writing by the Court—Irregularity.*) Where both parties to a pending suit consented to a reference to arbitration and an order of reference was then and there made by the Court in the presence of the parties, though not upon a written application, it was held that it was not open to the Court, having regard to the provisions of section 510 of the Code of Civil Procedure, to supersede that reference, the arbitrator not having declined to Act. *Nusserwanjee Pestonjee Pestonjee v. Meer Mynooddeen Khan*, 6 Moor L. A. 134, distinguished. *Shama Sundran Iyer v. Abdul Latif*, 27 Cal., 61, and *Laxmibai v. Hajee Widina Cassum*, 23 Bom., 629 followed.

Aikman J.

Abdul Hamid v. Riaz-ud-din, 30 All 32.

———**Ss. 539**—*Suit by Advocate General at instance of relators dismissed—No appeal by Advocate General—Appeal by relators—Maintainability.* A Suit having been brought by the Advocate General he is the proper party to appeal and not the relators. The relators are not parties to the suit and as relators they have no right to step in when the Advocate General, who was plaintiff, has not thought fit to appeal against the dismissal of the suit.
Chandavarkar & Heaton J. J.

Jan Mahomed v. Syed Nurudin. 32 Bom. 155.

———**secs. 563, 108**—*Rehearing—Remand of case—Trial on merits.*—In an application under sec. 108 of the Civil Procedure Code on the grounds of fraud and suppression of summons, the Munsiff rejected the application holding there was no fraud and no suppression. On appeal the District Judge passed the following judgment.

“This was an application under sec. 108, Civil Procedure Code, after hearing arguments of pleaders. I am of opinion that this is a fit case for remand, ordered accordingly that the appeal be allowed and the suit be remanded to the lower Court for trial on its merits.”

Held, this was not a proper judgment. The case having been in fact tried on the merits, the District Judge had no jurisdiction to remand it but should have come to a conclusion on the evidence.

Mitra & Caspersz J. J.

Sonaulla v. Beakul 7 C. L. J. 379.

———**sec. 568**—*Additional evidence on appeal—jurisdiction.*—Held that the legitimate occasion for sec. 508, Civil Procedure Code, is when on examining the evidence as it stands some inherent lacuna or defect becomes apparent not when a discovery is made outside the Court of fresh evidence and the application is made to import it. *Kessowji v. Great Indian P. Ry. Co.* 81 Bom. 381, followed.

Held, therefore, that an order made by the Judge admitting a sale-deed in evidence was made without jurisdiction. *White C. J. Miller J.*

V. Krishnama v. Narasimha M. L. T. 308.

———**ss. 584, 591, 623, 629**—*When review granted, no appeal lies against the final decree on grounds other than those mentioned in s. 629—Sufficiency of the reason on which review granted no ground for appeal against the final decree.*—Sections 584 and 591 of the Code of Civil Procedure do not control section 629, and do not, where a review is granted and a final decree passed, confer a right of appeal when such appeal is not based on one of the grounds mentioned in section 629. Where an application for

review of judgment is granted 'for any other sufficient reason' under section 623 of the Code, the sufficiency or otherwise of the reason is not a good ground of appeal against the order and is not, notwithstanding the general provisions of sections 584 and 521, a good ground of appeal against the final decree.

White C. J. & Benson J.

Gopal Aiyar v. Ramasami Sastrial 31 Mad., 49.

———**Ss. 588, 2, 103, 556, 558, 584**—*Appeal dismissed for default—Application to restore—Discretion of Judge—Order dismissing whether a decree—Whether appealable under S. 588.* Where an order was made before the recess adjourning a case to sometime after reopening of the Court to fix the date of hearing and the appellant trusting to his Vakil's Clerk's words that the appeal would not be taken so early did not appear.

Held, that the judge rightly exercised his discretion in dismissing the appeal, and that a decision dismissing the suit under S. 102 for default of appearance of plaintiff or dismissing an appeal under S. 556 for default of appearance by the appellant is not a decree within the meaning of S. 2 of the Civil Procedure Code. A decree passed "exparte" does not include a decree passed on default of appearance.

No appeal lies from such a decision.

White & Benson J. J.

Dakshindmurthi Pilla v. The Municipal Council of Trichinopoly
3 M. L. T. 336.

———**Ss. 595**—*Application for leave to appeal to the Privy Council—Limitation—High Court's refusal to admit appeal after period of limitation—"Decree"—"Final decree passed on appeal" meaning of.* An order of the High Court refusing to admit an appeal after the period of limitation prescribed therefor by the Limitation Act is not a "decree passed on appeal" by a High Court under section 595 of the Civil Procedure Code and there is therefore no jurisdiction to grant leave to appeal therefrom to the Privy Council under clause (a) or (b) of that section.

Jenkins C. J. & Batly J.

Karsondas v. Gangabai 32 Bom. 108.

———**S. 595**—"Final decree"—*Order of remand—Suit to annul incumbrances—Bengal Tenancy Act, S. 167—Notice—Dismissal of suit on the ground of non-service of notice—Appellate Court holding services proved and remanding case.* Where a suit to annul incumbrances by the purchaser of a putni at a sale for its own arrears was dismissed by the Subordinate Judge on the ground that the plaintiff had failed to prove the service of notices under S. 167, Bengal Tenancy Act, but the High Court on

appeal held that the service of notices was proved and remanded the suit for the trial of the other issues in the case.

Held, that though the order of the High Court was in form an order of remand, it finally decided the cardinal point in the case, viz, whether the notices were properly served or not. The order was therefore a "final decree" within the meaning of S. 595 of the Civil Procedure Code.

Maclean C. J. & Cox J.

Adandi Gopnl Gosaiain v. Naffor Chandra Pal, 12 C. W. N. 545.

———**S. 596**—*Appeal to Privy Council—Substantial question of law—Opportunity to examine witnesses not given.* Where on appeal, the decree of the first Court has been so far amended as to include therein expressly, plaintiff's rights in the Shamlat Deh and Shamlat Patti with other appurtenant rights as claimed but has otherwise been confirmed on all points the decree has been practically affirmed within the meaning of the last clause of Section 596 of C. P. Code, the addition made is simply an amplification of its wording and does not amount to variation so as to give right of appeal to His Majesty in Council.

Held, that none of the following defects is fatal to the foreclosure proceedings and constitutes a substantial question of law under S. 596, C. P. Code. (a) That the notice was bound to state the actual area claimed and not merely the 1½ Biswas' share actually entered in the mortgage deed. (b) That as there were two deeds of mortgage, two separate notices were required notwithstanding the fact that the second deed was one of further charge only. A vague assertion that sufficient opportunity was not given for producing witnesses, is not a substantial question of law.

Kensington & Lalchand J. J.

Diwan Abdul Hakim v. Harilal, 3 P. W. R. 232.

———**S. 622**—*Wrong decision on a question of law—High Courts' power to interfere under the section.* Under S. 622, Civil Procedure Code, the High Court can interfere only where a Court has acted illegally or without jurisdiction but not where the Court has been wrong on a question of law.

Sankaran Nair J.

Subramania v. Munusawmi, 3 M. L. T. 262.

———**S. 622**—*Commission issued by the lower Court for examination of persons not exempted by the Court—Want of jurisdiction.* *Held*, that a Civil Court has no jurisdiction to issue a commission for the examination of a witness on grounds other than those mentioned in the Civil Procedure Code.

Wallis & Miller J. J.

Nilmoni v. Tavanath, 3 M. L. T. 246.

———**S. 622—Execution application—Civil Procedure Code S, 311—Practice—Procedure.** Where in an appeal against the order of the Court of first instance, the lower appellate Court decided that the representatives of the decree-holder were properly brought in, *held* that the High Court has no power to interfere in revision. *Jhanday v. Sarman*, 21 All. 291, and *Venkatapathi v. Tirumalai*, 24 Mad. 447, followed. *Wallis & Miller J. J. Arnugiri v. Vadivelu*, 3 M. L. T., 249.

Companies Act VI of 1882 s. 61—Contributory: liable in respect of unpaid portions of calls even when the company's right to recover them is barred by limitation. Section 61 of the Indian Companies Act creates a new liability in the share-holders in respect of unpaid calls; and such calls can be recovered though barred by limitation before the order for winding up was made. *Benson & Miller J. J.*

Vaidiswara Ayyar v. Siva Subramania Mudaliar 3. M. L. T. 390—31 Mad., 66.

Contract—Immoral contract—Right to sue.—Where the plaintiff cannot make out his case except through an immoral transaction to which he was a party he must fail. *Russell J.*

Muncharam v. Regina 10 Bom. L. R. 58.

———**S. 11—Joint Hindu family—Mortgage executed in name of minor—Civil Procedure Code, section 562—"Preliminary Point."** A mortgage in favour of a joint Hindu family is not void because it happens to be executed in the name of a member of the family who at the time of execution is a minor. *Mokori Bibi v. Dharmodas Ghose*, 30 Calc., 539, distinguished.

Held also that the decision of an issue as to whether or not the document which formed the basis of the suit was void in consequence of its having been executed in favour of a minor was a decision on a preliminary point such as justified a remand under section 562 of the Code of Civil Procedure. *Mata Din v. Jamna Das*, 27 All. 691, followed.

Bannerji & Richards J. J.

Meghan Dube v. Pran Singh, 30 All. 66.

———**section 25—Agreement to pay a barred debt—Express contract—consideration valid.**—Defendant executed a sarkhat in favour of plaintiffs' firm in respect of a barred debt due by him to the firm, stating that no interest was to be paid.

Held that in order to maintain the suit, it was necessary to show express promise to pay, and not only that the intention to pay was deducible from the language of the acknowledgment.

Held, further that to hold that whenever there was a clear acknowledgment of a debt whether time barred or no, that was equivalent to a promise to pay upon which a suit might be maintained, would be to nullify the effect of section 19 of the Limitation Act.

Held, further that under section 25 (3) of the Indian Contract Act, a promise, made in writing, and signed by the person to be charged therewith to pay a barred debt was a good consideration, but there must be a distinct promise and not a mere acknowledgment.

Aikman & Karamat Husain J. J.

Gobin Das v. Sarju Das 5 All. L. J. 274.

———**Ss 62 and 63**—*Substituted Agreement—Effect of—award obtained subsequently on original agreement—Objections disallowed—Revisional Powers of High Court.*—Ghumaumal filed a suit against Dayal for declaration that a written agreement entered into by him in favour of Doyal and purporting to be a forward contract, was by way of wager, and the arbitration clause contained therein was null and void. Pending the disposal of the suit, Ghumanmal and Dayal arrived at a settlement by which Ghumanmal was to withdraw his suit, which he accordingly did, and was to pay Rs. 150 to Dayal in full settlement of his claim. Before payment of the said sum but after the withdrawal of the suit, Dayal in terms of the original agreement called upon Ghumanmal to appoint an arbitrator, and on his failing to do so, appointed an arbitrator for Ghumanmal, got award passed, and had it filed in Court.

Held (1), That the arrangement between the parties having been entered into after the alleged breach of the original contract, it could not be enforced as a novatio under Sec. 62 of the Indian Contract Act.

(2) Ghumanmal having carried out his part of the agreement by withdrawing his suit, and Dayal having accepted the withdrawal of the suit, there was ample consideration to convert the *nudum pactum* into a legal contract, and to amount to a promise on the part of Dayal to dispense with the performance of the original contract as provided for in Section 63 of the Indian Contract Act.

(3) There being no evidence to show that the payment of Rs. 150 was a condition precedent to the agreement, a non-payment thereof cannot be taken as a ground for avoiding the agreement.

(4) The original contract having been extinguished, the arbitrators had no authority to adjudicate on the claim, and the award was a nullity.

(5) That as the order filing such an award was manifestly erroneous

and if allowed to stand, would lead to a serious injustice which is otherwise irremediable, the High Court will interfere in revision and set aside the order.

Lucas & Crouch J. C.

Ghumanmal vs. Dayal Kanji 1 Sind L. R. 109.

———S. 74—Bond given for the performance of public duty, but not under the provisions of any law not within exception to s. 74 of Contract Act—Right of suit—Civil suit maintainable in respect of act amounting to criminal offence—Limitation Act, schd. II, arts. 6, 115—Local Board's Act (Madras) ss. 162-C and 162-D do not bar a civil suit on Contract.) An agreement between a contractor and a Local board contained the following terms:—As I have taken over under contract for Rs. 406 the right to collect the fees on the articles brought for sale in Udipi market from 1st April 1902 to 31st March 1903, I am bound to act according to the following conditions:—I am not entitled to collect more than the undermentioned rate of fees from the persons seated and trading on the site of the fair.

Rate of fees.

					RS.	A.	P.
Each head-load	...	...	...	...	0	0	2
„ cart-load	...	...	...	...	0	2	0

I am bound to put up a board with the rates of fees to be collected by me and my name in English and Canarese in a public place in the market. If I, my agent, or servant were to act contrary to the above regulations, I shall be liable to pay fine not exceeding Rs. 50 imposed by the President of the Taluk Board, or I am not entitled to object if my gutta is put up for auction again subject to the loss that may be sustained by the Taluk Board. Under the terms of the above contract, the President of the Taluk Board imposed on the defendant a fine of Rs. 20 on 4th November 1902 in respect of illegal excessive collections made by his agent. The defendant not having paid the fine, the President instituted a civil suit for the amount of the fine on 4th January 1904:—*Held*, that the suit was maintainable although the acts of the defendant's agent amounted to a criminal offence and no criminal proceedings were taken against the agent. It is doubtful whether the doctrine that a person injured by a felonious act cannot seek civil redress without prosecuting the felon in the criminal Courts applies in India; and the doctrine does not apply where a principal is sued in the civil courts in respect of the wrongful acts of his agent, *Held also*, that the agreement in question was not a bail bond or recognisance within the meaning of the exception to section 74 of the Contract Act, and though given for the performance of a public duty, it was not given under the provisions of any law. The exception to section 74 did not apply and the plaintiff was entitled to

reasonable damages under the section. *Held also*, that the suit was based on contract and for purposes of limitation fell within article 68 or 115 of schedule II of the Limitation Act and not under article 6 of the schedule. *Held further*, that the penal clauses of sections 162-D of the Local Board's Act did not preclude the plaintiff from suing the defendant on his contract.

White C. J.

The President of the Taluk Board, Kundapur v. Burde Lakshminarayana Kamphi. 31 Mad., 53.

Contract Act, sec. 196—Scope of. *Held*, that the rule, which was recognised in sec. 196 of the Contract Act, was that ratification in the proper sense of the term, as used with reference to the law of agency, was applicable only to acts done on behalf of the ratifier, and that looking to the substance of the matter it would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could, by acts *ex post facto*, charge upon the estate which she represented obligations not originally binding upon it.

P. C.

Raja Rai v. Debi Dayal, 10 Bom L. R. 130.

———**Sec. 221.—Lien thereunder—Indian Companies Act, sec. 149—Operation of,—Winding up order of the Courts, effect of.** *Held*, that the lien created under sec. 221 of the Indian Contract Act to secure the expenditure incurred before the order for winding up is not taken away by anything in the agreement between the petitioner and the Company and that sec. 149 of the Indian Companies Act does not deprive a second creditor of possession of his security.

Wallis & Miller J. J.

N. P. N. M. Chidambaran v. The Tinnevely Sarangapany Sugar Mills Co. Ltd. 3 M. L. T. 247.

Damages—Suit for exclusive possession where plaintiff was only entitled to joint possession—Right to claim damages for wrongful ouster. Where the plaintiff who was entitled only to joint possession, sued for exclusive possession, he is not entitled to receive damages on the footing that the ousting was wrongful as regards his interest in the property.

White C. J. & Miller J.

Marri v. Ghattawanem, 3 M. L. T. 277.

Declaratory Decree—Power of Court to make declaratory decree—Suit for possession by alleged next reversioners on ground that their mother who held a woman's estate in immoveable property was dead—Failure to prove mother's death—Dismissal of suit so far as possession was concerned and declaratory decrees made as to plaintiff's title. The plaintiffs brought

a suit for certain immoveable property as the next reversionary heirs of a deceased Hindu, and the only relief they claimed was possession on the allegation that their mother who had succeeded to a woman's estate in the property was dead:—*Held*, that on the finding by the Court that the evidence failed to establish the fact of the mother's death, the suit should have been wholly dismissed. Other allegations made in the plaint that alienations made by the alleged mother were not justified by legal necessity, and that the plaintiffs were really her sons, which were both denied, were merely argumentative steps towards the only decree sought, namely, possession; and under the circumstances the Court was not entitled to make a declaratory decree in the plaintiffs' favour on those allegations after the failure of the sole cause of action. (P. C.)

Walihan v. Jogeshwar Narayan, 35 Calc. 189.

Decree—Representative—Debt of father—Decree against son as representative—*Held* that a decree being against the son as representative of his father, the decree was valid and the son was bound to pay as such representative out of the assets of the deceased. *Sankaran Nair J.*

V. Bharathan v. N. Narayan Nair. 3 M. L. T. 314.

Defamation—Newspaper libel—Publication for public benefit—Fair and bonafide comment,—what constitutes—Administration of justice, how far matters of comment—Allegations of facts to be distinguished from comments—Imputation of Criminal offence not comment—Privilege—Matters per se libellous—Want of justification, effect of—Defamation of a Class—Rights of individuals of the Class.—The administration of justice is a matter for fair and bonafide discussion, but newspaper writers have to be careful as to the language they use and it is essential for them to differentiate between comments and allegations of fact, in which latter case, either the truth of such allegations or privilege must be established in order to successfully defend an action for the publication of the libel. Imputing to a person the commission of a criminal offence does not come within the range of fair comment. *Woodgate v. Redout* 4 F. and F. 202 R. v. *Tan Field* 42 J. P. P. 424, *Davies v. Shepstone* 11 App. Cas 187, *Hunter v. Sharp* 4 F and F 983, *Poptam v. Pickburn* 31 L. J. Ex. 133 followed.

In the case of a libel against a class of persons, if the description in the libel can be shown to be applicable to one of such persons, that person may sue for damages for the libel. *Lefence* 1. H. C. 637, followed.

Maclean C. J. Harrington & Fletcher J. J.

Barrow v. Hemchandra 12 C. W. N. 490.

Ejectment suit—Onus of proof of possession.—The plaintiff in an action for ejectment must prove possession, actual or constructive, within 12 years before suit. If the condition of the disputed property was such that it did not admit of actual occupation, the presumption, is that legal possession continued with the rightful owner, and it is sufficient for the plaintiff to prove either that the property continued in such state within 12 years of the suit or that the condition continued up to a date so near the 12 years that the natural and probable inference is that the condition of the property was similar up to a date within 12 years of the suit. If this is established by the plaintiff, the presumption would be that the possession of the plaintiff also continued within 12 years of suit. This presumption, however, is rebuttable and the defendant may show that he has been in actual occupation of the property or of any portion thereof for more than 12 years before suit. If the presumption is thus rebutted and the adverse possession of the defendant is proved in respect of any portion of the property, the suit of the plaintiff must fail to that extent.

Where the evidence of possession is equally unsatisfactory on both sides, the presumption may be made that possession was with the true owner.

The doctrine of constructive possession applies only in favour of the rightful owner and must not as a rule be extended to a wrong doer whose possession must be confined to land which he is actually in possession.

The principle upon which the doctrine of constructive possession is based stated.

Mookerji & Caspersz J. J.

Mirza Shamsheerbahadur v. Kunj Biharilal 7 Cal. L. J. 414.

Evidence—Pre-emption—Letter posted—Address. There is no presumption that a letter which was posted, was properly addressed, and the presumption that the letter reached the addressee, has no application till it is established that the letter was properly addressed.

Before the presumption of due service can be applied, it is necessary to prove that the notice was sent in a cover which was properly addressed.

The presumption that a notice sent by post was duly served is not a conclusive presumption of law; it is merely a presumption of fact, and whether it arises in a particular case or not, depends upon all the circumstances. *Jogendra v. Dwarka*, 15 Cal. 681 distinguished.

Mookerjee & Caspersz J. J.

Mir Tapurah v. Gobi Narayana, 7 Cal. L. J. 251.

Evidence—Exparte entry in order sheet—Bengal Tenancy Act, s. 61. An exparte entry in the order-sheet is by no means conclusive evidence, if

it is admissible in evidence, at all, as against the landlord, who was not a party to the proceedings for deposit under sec. 61 of the Bengal Tenancy Act.

Mookerjee & Caspersz J. J.

Mir Tapurah v. Gopi Narayan, 7 C. L. J. 251.

———*Survey maps—Evidence of title.* The Revenue survey maps are evidence of title and possession, and till the evidence is rebutted by other evidence of title, effect should be given to the state of things are indicated by the Revenue survey maps.

In respect of jungle and hilly lands possession must be presumed to be with the rightful owner.

Mookerjee & Caspersz J. J.

Nurza v. Kunj Behari, 7 C. L. J. 414.

———*Secondary evidence—Objection raised after admission—Estoppel.* Where the plaintiff had not shown any of the statutory grounds for the admission of secondary evidence i. e. a Court copy of a title-deed.

Held, that the fact that the defendants allowed the admission of the exhibit without objection did not estop them from afterwards objecting to it, and the copy should not have been marked until evidence had been given which made it receivable.

Wallis & Sankaran Nair J. J.

Kistna v. Mukatamala, 3 M. L. T. 297.

———*Act, S. 91—Oral evidence, admissible to show that a contract made by a person in his own name was made on behalf of himself and his partners.* Under English Law, in an action on a written contract, oral evidence is admissible to show that the party liable on the contract contracted for himself and as the agent of his partners. Such partners are liable to be sued on the contract, though no allusion is made to them in it. This is also the law in India as there is [nothing in section 91 of the Evidence Act to show that the Legislature intended to depart from this settled rule of English Law.

White C. J. & Wallis J.

Venkatasubbiah Chetty v. Govindarajulu Naidu 3 M. L. T. 259—31 Mad., 45.

———*Act, S. 108—Presumption of Death—Onus of proof—Section 108 of the Evidence Act raises no presumption as to the time of a person's death. It is incumbent on him, who alleges that a person died at some antecedent date, to prove that fact by evidence. Per GEIDT J.* The question for which provision is made in s. 108 of the Evidence Act is the question whether a man is alive or dead when the question of death is raised, and not

whether he was alive or dead at some antecedent date.

Maclean C. J. & Geidi J.

Fani Bhushan Banerji v. Suriya Kanta Ray, R. 35 Calc. 25

Execution proceedings—Suit—Sale by mortgagee of property not mortgaged, validity of, where to be questioned. Where a puisnemortgagee who was not made a party to the suit of the prior mortgagee, instead of proceeding against the property sold in execution of the decree of the prior mortgage proceeded against other properties of the mortgagor and sold them.

Held, that it was a matter to be complained of and (if wrong) remedied in execution proceedings and not by a separate suit.

Woodroffe & Coxe J. J.

Jageshwar v. Lalu, 7 C. L. J. 270.

Execution of Decree—Application for, on the Last Day of Twelve years succeeding the date of the decree—Civil Procedure Code, s. 230. The appellant obtained a decree against the respondent on the 11th April, 1895. He made several applications for execution from time to time. The last application was dated the 11th April, 1907, being the last day of twelve years succeeding the date of the decree. *Held*, that the application could not be granted.

Evans & Chamier J. C.

Deoki Nadan v. Saiyed Nazir Hasan (11 O. C. 57)

—————**Duty of executing court.** An executing courts business is simply to interpret the decree as it stands and not to question its correctness, but it is at full liberty to refer to the judgment or any other document on the file in order correctly to interpret it, and when there is a divergence between the decree and the judgment the proper course is to direct the decree-holder to apply for amending the decree to the Court which originally passed it.

Robertson & Shahdin J.

Radhamal v. Iman Bux, 3 P. W. R. 225.

—————**Sale of immovable property purchased by decree holder—Suit to obtain possession by assignee of auction purchaser—Civil Procedure Code, section 244—Practice—Full Bench reference—Bench not constituted—Powers and duties of a division Bench.** Where in execution of a simple money decree certain property was sold and purchased by the decree-holder himself, and whereafter the confirmation of the sale, the decree-holder failed to obtain possession of the property purchased, and it remained in the hands of the judgment-debtor.

Held, that a suit by an assignee of the decree-holder for possession of the purchased land was barred by sec. 244, Code of Civil Procedure.

Knox & Aikman J. J.

Bhanimal v. Makhan Lal, 3 M. L. J. 283.

Guardian and Minor—Guardian *ad litem*—Procedure Code, section 447—Necessity of formal discharge from the duties of guardian *ad litem*—Suit to set aside a decree.) Held that no suit will lie to set aside a decree where fraud is neither alleged nor proved and no specific relief is asked for save and except the setting aside of the decree.

Held also that where the same person is both certificated guardian and guardian *ad litem* to minor plaintiffs, the fact that one of such plaintiffs has come of age and been appointed certificated guardian of the persons and property of the others would not relieve the original guardian of her duties as guardian *ad litem*: to do this requires a special order section 447 of the Code of Civil Procedure.

Stanley C. J. & Burkitt J.

Banarsi Prasad v. Ram Narain, 30 All. 105.

Guardian *ad litem*—Appointment of—passing over certificated guardian, effect of.—If a person, who was not a certificated guardian of the minor, was appointed a guardian—*ad litem* at or time when act XL of 1853 was in force:

Held, that the passing over of the certificated guardian was not more than irregularity and would not of itself vitiate either the decree passed or a sale consequent upon such decree.

Woodroffe & Cox J. J.

Jogeshwar v. Lala 7 C. L. J. 270.

——— **Guardian *ad litem*—Appeal—Guardian *ad litem* not made a party by appellant—Limitation.** Where a guardian *ad litem* of a defendant-repondent was not made a party to an appeal filed by the plaintiff until after the period of limitation for filing such appeal had expired, it was held, that the appeal was not for this reason time-barred. *Khem Karan v. Hardayal*, 4 All. 37. followed.

Stanley C. J. & Burkitt J.

Rup Chand v. Dasodha, 30 All. 55.

Guardian and Ward—Common creditor—Payment by guardian Where a guardian paid money to a common creditor of his and the ward's, and did not set off the amount against the minor.

Held, that the payment should be allocated to that portion of the debt for which the guardian was liable. *White C. J. & Sankaran Nair J.*

Ambugatyanni v. Swaminatha Aiyar, 3 M. L. T. 321.

———*Bond by guardian—Liability of minor—Bond keeping alive debt incurred for necessities, when binds minor's estate—Personal liability of minor.* The general proposition that a guardian of a minor cannot bind his ward personally by a simple contract debt, by a covenant or by any promise to pay money or damages, is subject to the modification that the promise will not bind the minor unless it has been made merely to keep alive a debt for which the ward's property was liable. Where the promise is to pay money which has been expended for necessities, the estate of the minor may be liable not on the promise but because money has been supplied. It is established law that a guardian cannot bind his ward's estate except by a document purporting to bind it. *Maharana Shri Ranmalsingji v. Vadilal Vakhatchan*, 20 Bom. 61, followed. When a third person enters into dealings with a guardian of a minor, and advances money for necessities for the minor or for the benefit of the estate, and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn up as to render the estate of the minor liable in law for the debt.

Brett & Holmwood

Bhawal Sahu v. Baijnath Partab Narain Singh, 35 Cal. 320.

———*Guardian can withdraw—procedure—*A guardian appointed under Act VIII of 1890 can at any time withdraw from the guardianship and if he does so the Court should proceed to act under section 440 of the Act and discharge him.

Robertson J.

Gurawditta v. Radha Kishen 3 P. W. R. 241.

———*S. 28, 29 and 47—Permission to transfer, order granting appeal against order granting permission to transfer.* Held, that no appeal lies against an order of a District Judge sanctioning a mortgage in preference to another person. Such an order cannot be treated as an order refusing sanction to mortgage.

Chamier J. C.

Musammat Shiam Kudwar v. Shiam Lal O. C. 291.

———*ss. 29, 31—Interest, rate of—Bond guardian with permission of the Judge—Duty of Judge while giving permission.*—Held—that while giving permission to a guardian to borrow money for the purposes of the minor, the Judge is bound to specify the rate of interest, and the amount to be borrowed. These should not be left to the discretion of the guardian.

A creditor is not bound to see to the application of the money borrowed with the permission of the Judge. It is only necessary for him to prove that he lent the money relying on the Judge's permission.

Bannerji & Richards J. J.

Thakur Prasad v. Gauripat Rai 5 All. L. J. 260. = 1908. A. W. M. 75.

High Court—*Letters patent, 1865, clause 12, whether an objection that no leave was taken under clause 12 can be waived—Letters patent, 1885, clause 12—Registrar, power of, to grant leave under clause 12 of the Letters patent.* The Registrar has no power to grant leave under clause 12 of the Letters patent, 1865.

If the defendant is served and takes any step in the action except moving to set aside the service of writing on him he waives the objection of want of jurisdiction on the ground that no leave under clause 12 was properly obtained and cannot be heard.

Fletcher J.

A. G. King v. Secretary of State, 7 Cal. L. J. 441.

—————**Powers of Superintendence under s. 15 of Charter Act**—*Civil Procedure Code, ss. 385, 622—High Court can interfere under s. 15 of Charter Act when lower Court issues commission to examine a witness on grounds other than those mentioned in the Code.* An order, under section 386 of the Code of Civil Procedure for the examination of a witness on commission, can only be made on one of the grounds mentioned in the Code and a Court usurps a jurisdiction not vested in it by law when it orders such examination in the absence of any such ground. The High Court has power to interfere with such an order under section 15 of the Charter Act. *Obiter*; The High Court may also interfere with such an order under section 622 of the Code of Civil Procedure, although the order is only interlocutory.

Wallis & Miller J. J.

Somasundaram Ohettiar v. Manicka Vasaka Deika 31 Mad., 60.

Hindu Law—*Administrator pendente lite, liability of, to pay debt of deceased—Quasi-executor de son tort.* Under the Hindu law, as in English law, any one taking charge of property belonging to a deceased person renders himself liable for his debts. So an administrator *pendente lite*, who intermeddles with the estate of a deceased person after he ceases to be administrator, can be sued as a *quasi-executor de son tort* *Jogendernarain Deb Roykut v. Emily Temple*, 2 Ind. Jur. (N. S.) 234 and *Magaluri Garudiah v. Narayana Rungiah*, 3 Mad. 359, followed.

Maclean C. J., Harrington & Fletcher J. J.

Khitish Chandra v. Radhika Mohan Roy, 35 Calc. 276.

—————**Berar**—*application of Mitakshara*—The Mitakshara as interpreted in the Bombay Presidency is the *lex loci* in Berar.

Ram Prasad v. Mt. Subabai 4 Nag. L. R. 31.

—————**Debt—Redemption—Foreclosure suit against father—Sons**

not made parties—Creditor having knowledge of their existence—Son's suit to redeem, maintainability of.—The principle of the ruling in *Debi Singh v. Jiat Ram*. I. L. R. 25 All. 214, should not be extended to the cases where a mortgagee having knowledge of the existence of the sons of the mortgagor does not implead them in a suit for foreclosure and obtains a decree against the father alone. The sons, who were not made parties to the foreclosure suit, can maintain an action to redeem the property on the sole ground that they were not made parties to the suit.

Aikman & Karamat Husain J. J.

Ram Prasad v. Manmohan 5 All. L. J. 267.

—*Gift—Construction of deed of gift—"Malik"—Gift to widow as "malik wa khudakkhtiyar"—"Absolute ownership"—Heritable and alienable estate—No distinction between male and female donee.* A Hindu executed a deed of gift of immovable property to take effect after his death, to each of his two wives and his daughter-in-law, "as owners (maliks) with proprietary powers" One of his widows on coming into possession of her share made a will disposing of it in favour of her brother. In a suit by the next heirs of the donor questioning her power of alienation.

Held that in the true construction of the deed the widow took a heritable and transferable estate in the property. The use of the word "malik" implies "absolute ownership" unless there is anything in the context or surrounding circumstances to qualify such meaning: and it was not so qualified by the fact that the donee was a widow. In this case the context rather strengthened the presumption that the word was intended to bear its proper technical meaning.

Lalit Mohun Singh Roy v. Chukkun Lal Roy, L. R., 24 I. A., 76: 24 Calc., 834, and *Kollany Koor v. Luchmes Pershad* 24 W. R., 395, followed.

P. C.

Surajmani v. Rabi Nath Ojha, I. L. R., 30 All. 84.

—*Inheritance—abandoned wife—succession to—*Where a Brahmin husband totally and finally abandons his wife on the ground of inexpiable or unexpiated unchastity, so as to destroy all her present and future claims on him and his inheritance created by marriage, the relationship of marriage is dissolved for the purposes of the Civil law, and neither party can thereafter be the heir to the property of the other. Assuming in the above case that the marriage bond continues to exist, the husband and his sapindas cannot inherit property acquired by the abandoned wife as the result of her excommunication.

Ramprasad v. Mt. Sabu Bai 4 Nag. L. R. 31.

—————**Inheritance**—*Berar, husband's sister's daughter preferred to his brother's son.*—In a case governed by the Mitakshara as applied in Berar, a sister's daughter is a preferential heir to the husband's brother's son.

Ramprasad v. Mt. Sabu Bai 4 Nag. L. R. 31.

—————**Joint family**—*Suit by Karta alone for rent due to family—not competent.* When rent is due to members of a joint Hindu family, it is not open to Karta alone to maintain a suit for rent without joining the other members either as plaintiffs or as defendants, except when the tenant has dealt with such Karta as sole landlord. *Kana Pisharody v. Narain*, 3 Mad., 234 followed.

When the co-owner landlords were not unwilling to join as co-plaintiffs but did so with the utmost readiness as soon as objection was taken by the tenant defendants, they should have been joined as plaintiffs in the first instance and if they are brought on the record after the expiry of the period of limitation, their claim is barred by limitation and the entire claim is barred as the claim was joint and indivisible.

Mookerjee & Caspersz J. J.

Mir Tapurah v. Gopi Narayan, 7 Cal. L. J. 251.

—————**Maintenance to widow**—*Living apart during husband's life-time for no sufficient cause*—*Right to maintenance after death of husband out of his estate.* A wife who without cause leaves her husband and lives apart from him during his life time, does not forfeit her right of maintenance against his estate after his death. The Court will however take into account such conduct on the part of the wife in fixing the amount of maintenance.

The law on the subject of widow's right to demand maintenance explained by *Sankaran Nair J.* *Wallis & Sankaran Nair J. J.*

Surampalli v. Surampalli, 3 M. L. T. 266.

—————**Partition**—*Discretion of the Court.* Where prior to partition, a co-parcener had alienated family property, the Court will endeavour if it can be done with due regard to the interest of the other co-parceners to allot such property to his share. *Wallis & Sankaran Nair J. J.*

Munsamy v. Varadra, 3 M. L. T. 249.

—————**Religious endowment**—*Powers of a Hindu testator to place limitations*—*Request followed by endowment.* Disputes having arisen about the management of a temple between D, the founder of the endow-

ment, and others, the matter was referred to arbitration. The arbitration decided that D should be the manager of the temple but made no provision as to who was to succeed him.

Held, that the founder of an endowment had an inherent right to appoint his successor in the absence of any express provision to that effect. D executed a document by which he reserved the life estate in his property to himself and which was to devolve on the daughter after his death.

Held, there was no objection to the limitations by a Hindu testator or settler of a life estate followed by an endowment of property to religious or charitable purposes, such limitation not being contrary to the rule laid down by the Privy Council in the Tagore case.

Stanley C. J. & Burkitt J.

Govindpershad v. Gomti, 5 All. L. J. 256.

———*Reversionary heirs, suit by, to set aside alienation by the widow.* Where an alienation was made by a Hindu widow of the land of the value of Rs. 1,900 for Rs. 540 which went towards the discharge of debts binding on the reversioners, *held* that the sale could not be set aside as the attaching creditors could have forced a sale and as there is no evidence to show that these debts could have been paid off otherwise than by sale.

Boddam & Sankaran Nair J. J.

Draupadi, 3 M. L. T. 251.

———*Self acquisition—Burden of proof—Throwing into common stock—Issue not taken in lower Courts—Jurisdiction in second appeal.* Where it is admitted that there was ancestral property, there is a presumption that the property of a member of the family is ancestral and the burden of showing that any property is self-acquired is on the defendant, who alleges that it is self-acquired.

Benson & Munro J. J.

Venkatasubramania v. Subramania Aiyar, 3 M. L. T. 314.

———*Shebaitship—Hereditary alienation of—Alienation by will or inter vivos.*—A shebait is a manager, or quasi trustee for the benefit of the idol and therefore has no power to alienate the hereditary office of shebaitship by will. •*Mancharam v. Pranshankar*, 6 Bom. 298, disapproved *Per MITRA J.* A shebait has no power to alienate hereditary shebaitship except for necessity or clear benefit to the *Thakur*.

Maclean C. J. Mittra & Woodroffe J. J.

Kajeshwar Mullick v. Gopeshwar 35 Calc. 226.

———*Succession—Dayabhaya—Joint estate—Joint nephew prefer*

entail heir to nephew separated by exclusion—Spiritual benefit, doctrine of, not the only principle of succession—Mitakshara, application of, in absence of texts of Dayabhaga—Quasi contract and affection, principle of.—Spiritual benefit is not always the guiding principle of inheritance under the Bengal School of Hindu law.

In cases not contemplated by Jimutvahava or his followers, the law should be developed on rational lines consistently with principles followed in similar cases and the decisions of the Courts should not be based on a blind adherence to the principle of spiritual benefit whom such adherence would lead to a violation of other recognised principles consistent with natural justice.

In all cases of absence of texts or precedants under the Dayabhaga law recourse should be had to the theory of propinquity and natural love and affection as adopted by Vignaneswara and the commentators of the more ancient and orthodox schools of Hindu Law.

On the death of a Daya bhaga Hindu a nephew who was living in joint estate and mess with him excludes another nephew who was separate, when the separation was due to his father having been excluded from—inheritance for causes not expressly mentioned in the text books. The position of the latter is similar to that of the separated coparcener who had not re-united, and consideration which applies in the one case should govern the other.

Mitra J.

Akhoy v. Haridas 12 C. W. N. 511.

———*Hindu widow—Effect of compromise entered into by a Hindu female—Estate.* Held, that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court; the reversioners can only be bound by a decree made after a full contest in a *bona fide* litigation. *Gobind Krishna Narain v. Khunni Lal*, 29 All. 487, followed.

Stanley C. J. & Burkitt J.

Mahadei v. Baldeo, 30 All, 75.

———*Widow's estate—Power of widow in possession of husband's estate—Alienation of estate made by widow with concurrence of reversioners—Consent at time of alienation—Subsequent ratification—Quantum of consent necessary—Custom excluding daughters from succession, evidence of.* A Hindu widow in possession of her husband's estate as his heir has power, apart from legal necessity, to alienate the estate, with the

concurrence of the reversionary heirs, so as to bind the persons who are the next reversioners when the succession opens out on her death; and this principle has been admitted by all the High Courts in India.

The restriction sought to be placed by the Allahabad High Court on the widow's power to surrender in favour, or alienate with the consent of presumptive reversioners so as to defeat the title of the actual reversioner at the time of the widow's death is at variance with this principle, and not in accordance with the practice in other parts of India in which the Mitakshara law prevails.

Ramphal Rai v. Tula Kuari, 6 All., 116, dissented from so far as it supports such restriction.

Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained although there may be cases in which special circumstances may render the strict enforcement of this rule impossible.

It is immaterial whether the concurrence of the reversioners is given at the time the alienation is made or whether the transaction is subsequently ratified. The maxim "*Omnis ratihabitio retrotrahitur et mandato priori equiparatur*", referred to.

A custom among the Bhale Sultan tribe of Chhatris in Oudh excluding daughters from succession was held to have been established on the evidence,

(P. C.)

Bajrangi Singh v. Manokarnika Bakhsh, 30 All., 1

——— **Widow taking absolute estate under a consent decree—suit by reversioners to recover property after her death.**—Under a consent decree it was agreed upon between a widow and her husband's brothers, who were his next reversionary heirs, that she should take absolutely her husband's share in the family property. The family immoveable property was sold and a certain sum was given her as her husband's share: Eleven years after her death the reversionary heirs brought a suit to recover the property from the hands of executors appointed under the will.—

Held, (1) that the reversionary heirs were estopped from bringing a suit to recover the property after the arrangement which they had made with the widow. The ordinary restrictions would not apply to property which has passed to a widow not as heir, but by deed or other arrangement conferring on her absolute powers.

(2) That as the immoveable property was converted into money and the money became moveable property in her hands and lost all impress of

its origin, article 120 of the Limitation act applied, and the suit was time barred.

Beaman J.

Ganpatrao v. Vamanrao 10 Bom. L. R. 210.

———*Hindu widow—Mortgage of husband's estate adversely to adoptive son—Suit to enforce mortgage against adoptive son—Lis pendens—Contentious suit—Application for leave to sue in forma pauperis—Civil Procedure Code, section 410.*—A mortgage of part of her late husband's estate was executed by a Hindu widow in defiance of the rights of her husband's adopted son, and in fact in collusion with the mortgagee and in order to deprive the adopted son of his adoptive father's estate. Shortly before this mortgage was executed by the widow the adopted son had applied for leave to sue *informa pauperis* for the recovery of his adoptive father's estate. *Held*, on suit by the mortgagees to enforce their mortgage against the adopted son, then in possession, that the suit must fail, both because the fact of the estate having to some slight extent benefited by the money borrowed was not sufficient under the circumstances to make the mortgage enforceable against the adopted son—*Hanooman persaud Panday v. Mussumat Babooee Munraj Koonweree*, 6 Moo. I. A., 393, distinguished—and also because of the application of the doctrine of *lis pendens*. *Faiyaz Husain Khan v. Prag Narain*, 29 All. 393 referred to.

Stanley C. J. & Burkitt J.

Ambika Partap Singh v. Dwarka Prasad, 30 All. 95.

———*Widow—Raising funds to discharge husband's debt—Knowledge of lender.* *Held*, that in the case of a lender who has knowledge that the debts of the husband can be paid out of the funds in the hands of the widow and that there was no necessity for her to raise any funds to discharge the debt, no equities arise because he practically assisted the widow to dissipate the estate.

Mouler Mahomed Sunsool Hoodar v. Shivakram, 14 B. L. R. 226, distinguished.

Benson & Munro J. J.

Srinivasa Sastriyal v. Panchanatha, 3 M. L. T. 323.

———*Woman's estate—Position of a purchaser from a female with limited estate.* *Held*, that the considerations, which applied with special force to the present case, were:—One who claims title under a conveyance from a woman, with the usual limited interest which a woman takes, and who seeks to enforce that title against reversioners, is always subjected to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of

of the alienation she was making, and also that the alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity, and this burden lies the more heavily on one who comes into Court, with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner. (P. C.)

Raja Rai v. Debi Dayal, 10 Bom. L. R. 230.

Inam land—*Sale of, validity of—Subsequent enfranchisement—Effect of—Transfer of Property Act, sec. 43.* Held, that in the case of the Inam land, whether the Inam be regarded as a grant of the land or as a reversion of the assessment payable on the land, if the land is transferred, the Inam is transferred unless in the transfer, the Inam is reserved.

Where land classed as Village Service Inam was sold in 1889 and the Inam was enfranchised in 1891.

Held, that the transfer of the Inam was by Regulation XVI of 1831, which was in force in 1899, null and void, and consequently the alienation as a whole was also null and void, but when the land was enfranchised in 1891, it became alienable, and the vendee could require that the transfer should operate on the alienable interest acquired by the vendor. *Ramasami Naik v. Ramasami Chetty*, 30 Mad. 255, distinguished.

White C. J. & Miller J.

L. Angannayya v. Daroor, 3 M. L. T., 243.

Injunction—Ancient Lights—Injunction to restrain defendant from interfering with ancient lights—Quia timet action, necessary ingredients for. There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger and there must also be proof that the apprehended damage will, if it comes, be very substantial. *Fletcher v. Bealey*, 28 Ch. D. 688, followed.

Macleod J.

Gangabai v. Purshotam, 32 Bom. 146.

Insolvency Act (XI and XII Vict., C 21) S. 9—Procedure—Adjudication of insolvency, application for—By petition or by a rule—Rule obtained per incuriam. The usual procedure for obtaining an adjudication order is by petition to the Court duly verified under s. 9 of the Indian Insolvency Act and not by a rule. *Fletcher J.*

In re Bithal Dass Halla, 12 C. W. N. 538.

———**S. 49—“May,” construction of—stay of further proceedings after the filing of the insolvent’s schedule.** Section 49 of the Indian Insol-

vent Act empowers the Insolvent Court to deal with cases (1) in which a decree has been passed; and (2) cases in which a suit has been instituted but a decree has not been passed. In the former cases the Court may stay the execution; in the latter it may stay further proceedings in the suit.

The word 'may' in the section indicates that the requisite conditions which the section says down being fulfilled the Court will and ought to exercise the power it may exercise. The word 'may' does not vest the Court with a discretion which it can uniformly exercise in one case and renounce it in the other. What discretion there is, is meant to be used in exceptional cases.

Beaman J.

Hookamchand v. Nowroji Sorabji, 10 Bom. L. R. 345.

Interest Act (XXXII of 1839)—*Hindu law on the subject of interest—When to be invoked.* In the absence of any agreement to pay interest and any demand in writing made to bring the case with the provisions of the Interest Act, the Hindu Law should not be invoked as it is not binding in such matters.

Wallis & Sankaran Nair, J. J.

Subramania v. S. A. Subramania, 3 M. L. T. 278.

Jhansi Incumbered Estates Act (16 of 1882) Ss. 8 and 28.
Mortgage—Unlawful consideration—Contract Act, S 23—Transfer of Property Act, Section 43. Held, that a mortgage executed by a mortgagor who was at the time disqualified under section 8 of the Jhansi Incumbered Estates Act, 1882, was a contract entered into for an unlawful consideration within the meaning of S. 23 of the Indian Contract Act, and S. 43 of the Transfer of Property Act, could not be prayed in aid to empower the mortgagee to bring a suit for foreclosure after the mortgagors' disability had ceased.

Bannerji & Aikman, J. J.

Radnabai v. Kamod Singh, 30 All. 38.

Jurisdiction—*Where suit instituted against a deceased person, Courts have no jurisdiction to allow the plaint to be amended by substituting the names of the representatives of the deceased.* There is nothing in the Code of Civil Procedure to authorise the institution of a suit against a deceased person and the Courts have no jurisdiction to allow the plaint in such a case to be amended by substituting the names of the representatives of the deceased, even when the suit is instituted *bona fide* and in ignorance of the death of the defendant. *Mohun Chunder Koon-doo v. Azeem Gazee Chowkeedar*, 12 W. R., 45, followed. *Mallikarjuna v. Pullayya*, 16 Mad. 319, distinguished.

Wallis & Miller J. J.

Veerappa Chetty v. Tindal Ponnan, 31 Mad., 86.

Land Acquisition Act, S. 3 (a).—*“Land” Fishery—Rights, if it can be acquired—Incorporal rights not land—Second acquisition—Pleading.* Government having acquired the foreshore of the sea under the Land Acquisition Act leased the fishery-rights therein to certain persons for a term of years and they transferred or sublet their rights to others. Government subsequently took proceedings under the Land Acquisition Act to re-acquire these fishery—rights. Held—That these incorporeal rights, detached from the land out of which they arose were not subjects for acquisition under the Act. Nor could Government acquire rights which had already been acquired by it in a previous proceeding.

It is only land including the rights arising out of it, but not rights detached from the land, that can be acquired under the Act.

Fishery-rights are not “land” within the meaning of the Act. The legality of the proceeding before the Land Acquisition Collector and of the reference to the Court could be enquired into by the Court of its own motion.

Rampini and Sharfuddin J. J.

Raja Shyam Chunder Mardraj v. The Secretary of State

12 C. W. N. 569 = 7 C. L. J. 445.

Landlord and Tenant—*Landlord jointly interested in holding—Partition, if effects a division of the holding.*—Plaintiff held land in joint tenancy with the Defendants under herself as the landlord. The shares of plaintiff and the defendants having been separated by partition, the Defendant, contended that the Plaintiff could not sue them for rent jointly but must bring a separate suit against each tenant, Held—That there was only a division of the land and not a division of the holding and the tenants remained jointly liable to the landlord for the entire rent.

Geidt & Chitty J. J.

Dukh Haran Singh v. Must Bibi Soglira 12 C. W. N. 568.

———*Disclaimer—Forfeiture.*—There was no disclaimer by B. of the relationship of landlord and tenant with A such as would cause a forfeiture of tenancy when B did not deny that he held the land as a tenant although he denied A's title to the interest of the landlord, A's case being that he acquired the landlord's interest at certain rent sales.

Stephen and Doss J. J.

H. Mathewson v. Jadu Matho 12 C. W. N. 525.

———*Denial of title of landlord, effect of—Forfeiture of notice to quit.*—The denial of the title of the landlord in order to disentitle a tenant to the usual notice to quit must be before the institution of the suit.

Unhamma v. Vaikunta 17 Maj. 218, followed. *Vithu v. Maintazuddin* 28 Cal. 125 followed. *Abdulla v. Moideen* (17 M. L. J. R. 287), not followed.

Wallis & Munro J. J.

Reria v. Subrammani 3 M. L. T. 265 = 18 M. L. J. 153.

Lease—Condition for payment of rent in advance—Suit by purchaser of demised property for rent—Registration—Notice.—Certain property was leased for a term of 10 years, the lease containing a provision to the effect that if at any time during the currency of the lease the lessor should demand any portion of the rent in advance from the lessee, the latter should be bound to pay it on obtaining a receipt. Subsequently to the execution of this lease the demised property was sold by auction in execution of a decree. The auction purchaser sued the lessee for rent, but was met by the plea that the rent claimed had been paid to the lessor in advance under the terms of the lease. The lease was registered and it was found that the auction purchaser had not made inquiry of either the lessor or the lessee as to whether or not any rent had been paid in advance according to the terms of the lease. Held that under these circumstances the plaintiff was not entitled to recover. *Stanley C J. & Burkitt J.*

Nand Kishore v. Anwar Husain, 30 All. 82.

Legal Practitioners Act (XVIII of 1879,—Unprofessional Conduct as amended by Act XI of 1896), ss. 13 cl. (f), 14—Pleader, right of, in declining to 'act'—High Court, at what stage of proceedings, can interfere. A pleader is within his rights in declining to accept a brief if he does not wish to do so, and is not bound to give his reason for it. A pleader called upon to show cause why he should not be reported to the High Court for unprofessional conduct under ss 13 and 14 of the Legal Practitioners Act, need not wait to see the result of the application against him, and is entitled to come at once to the High Court for its intervention.

Maclean C. J. & Coxe J.

In re Nabin Chandra Das Gupta, a Pleader, 35 Cal. 317.

Light and air—Ancient lights—Substantial interference—Nuisance Reflected light—Mandatory injunction, refusal of—Delay—Damages.—The right of the owner of the dominant tenement is a right to the reception of light and air in a lateral direction but to constitute an actionable obstruction, the same must amount to a nuisance.

The question that has to be decided, is not how much light is left in spite of the obstruction but whether there has been such a diminution of light as to constitute an actionable nuisance. *Colls. v. The Home and Colo-*

nial Stores (1904) A, C, 177 followed.

Where it was urged that, although the natural light coming into the dominant tenant had been diminished, the reflected light had increased with the result that the rooms were better lighted than before, but it was admitted that if the building was raised, the light coming into the building would be seriously affected.

Held—That the right of the dominant owner (to light) should not be made dependent on his refraining from exercising his undoubted right of raising the height of his building; there was thus a substantial interference with his rights.

Fletcher J.

Anath Nath Deb, v. J. C. Galstoun 12 C. W. N. 519.

Limitation—Execution of Decree, Application for—Amended decree, limitation in case of.—**Held**, that an application for execution made after 3 years from the date of the original decree but within 3 months of the date of amendment of the decree by which it became for the first time capable of execution was within limitation.

Muhammad Suleman Khan v. Muhammad Yar Khan 17 All. 39
Chhedi v. Lallu 24 All. 300 and *Rungiah v. Nanjappa* 26 Mad. 430 followed.
Chamier & Sanders C. J.

Musammat Zuhra Bibi v. Musammat Zulaikha Bibi 11 O. C., 22.

———**Misjoinder—amendment of plaint—original plans within time.**—Several Plaintiffs joined to institute a suit well within the prescribed period of limitation: on an objection being raised as to misjoinder of parties and of causes of action, the plaint was amended by striking out the names of all the Plaintiffs but one, who elected to continue to carry on the suit so instituted within time: **Held**, the suit was not barred.

Maclean C. J. Harington & Fletcher J. J.

A. S. Barrow v. Hem Chandra 12 C. W. N. 490.

———**Appeal—Time spent in review**—**Held**, that, in computing the period of Limitation for an appeal the time spent in prosecuting a review should be deducted.

Robertson J.

Jagatram v. Jacob 3 P. W. R. 239.

Limitation Act s. 14—Suspension of right of action.—In 1872, a Hindu died intestate leaving three sons B. M., M. M. and C. L. C. L. died in 1881. On the 18th January 1892 M. M. and the sons of C. L. were dispossessed of their share in certain property. In 1896 the sons of C. L. instituted a suit against B. M. and M. M. for possession and account, and in

1897 on the death of B. M. and M. M. their sons were brought on the record. The sons of M. M. supported the sons of C. L., and an issue was raised as between the co-defendants as to whether the sons of M. M. were entitled to a certain share. A decree dated the 20th April 1903, was passed in favour of the plaintiff and it was further declared that the defendants, the sons of M. M., were entitled to the share they claimed. The sons of B. M. appealed. On the 22nd February 1904, the Appeal Court confirmed the decree in favour of the plaintiffs, and set aside the decree so far as it related to the sons of M. M. Thereupon, on the 14th November 1904, the sons of M. M. instituted the present suit against the sons of C. L. and of B. M. for possession, partition and accounts:—*Held*, that the right of the plaintiffs to bring an action to recover the property was suspended between the 20th April 1903 and the 22nd February 1904, and that in consequence the suit was not barred by limitation. *Ranee Surno Moyee v. Shooshee Mokhee Burmonia*, 12 Moo. I. A. 244, and *Prannath Ruy Chowdhry v. Rookea Begum*, 7 Moo. I. A. 323, followed. *Quære* : whether section 14 of the Limitation Act covers the case.

Maclean C. J. & Harrington & Fletcher J. J.

Lakhan Chunder Sen v. Madhusudan Sen, 35 Calc. 209.

—————s. 15,—*Attorney and Client—Solicitor's costs, suit for—Limitation—Order for taxation—Practice.*—An order for taxation of a solicitor's costs does not, under s. 15 of the Limitation Act, stay the institution of any suit by him for his costs. Art. 84, Sch. 11 of the Limitation Act is applicable to such a case. *Per* HARRINGTON, J. An order for taxation can only affect the right to institute a suit if it relates to something which is a condition precedent to the bringing of a suit.

Maclean C. J. & Harrington & Fletcher J. J.

Makham Lal Mukerjee v. Nalin Chandra Gupta, 35 Calc. 171.

—————Arts 89, 116, 132.—*Principal and Agent—Account, suit for—Limitation—Charge upon immoveable property—Contract under registered document.*—Where the suit is not merely one for account, but one to enforce in the plaintiff's favour the charge created to secure the moneys which might be found due from the agent to his principal on his accounts, the case falls within Art. 132 of the Limitation Act. To ascertain which Article of the Second Schedule of the Limitation Act applies, it is important to see what is the relief which the plaintiff claims. *Asghar Ali Khan v. Khursher Ali Khan*, 24 All. 27; L. R. 28 I. A. 227, *Jogendra Nath Roy v. Deb Nath Chatterjee*, 8 C. W. N. 113, *Madhub Chunder Chuckerbutti v. Debendra Nath Dey*, 1 C. L. J. 147, *Shib Chandra Roy v. Chandra Na-*

rain Mukerjee, 32 Calc. 712, *Mati Lal Bose v Amin Chand Chattopadhyay*, 1 C. L. J. 211, distinguished. *Maclean C. J. & Coxe J.*

Hafezuddin Mandal v. Jadu Nath Saha, 35 Calc. 293.

———**Art s. 91, 144**—*Benami transfer*—*Fraudulent object defeated*—*Right of owner to recover from benamidar*—Where a benami deed of transfer of land was executed with the object of defrauding creditors, but the object failed, Held—That the owner was entitled to recover the land from the benamidar and that without being required to set aside the deed as a preliminary. Art, 144 not Art. 91, of the Limitation Act therefore applied to the suit. *P. O.*

Petherparmal Chetty v. R. Muniandy Servai 12 C. W. N. 562.

———**Art. 111, 132**—*Unpaid vendor's lien*—*statutory charge*—*Transfer of Property Act, Sec. 35 payment of prior incumbrance by vendee*—*Liability of vendee*.—A claim by a vendee for the enforcement of payment of purchase money by sale of the purchased property is a statutory charge differing from the lien which an unpaid vendor in equity possesses for the recovery of the balance of his purchase money. The article of Limitation applicable to such a suit is 132 and not 111. *Har Lal v. Muhamdi* L. R. All. 454; *Rama Krishna v. Subrahmania* Mad, 305. approved and followed.

F. B.

Munir un Misa v. Akbar Khan 5 A. L. J. 243.

———**Art. 123**—*Scope of*—Article 123 of the Limitation Act is not meant to be applied to cases of reversioners suing to recover property which has been held for some intervening time by a widow, whether that property be moveable or immoveable. *Beaman J.*

Ganpatrao v. Vamanrao 10 Bom. L. R. 210.

———**Art. 144**—*Suit for possession under an Arthamulgeni lease governed by art. 144*.—A suit to recover possession of land leased under an *Arthamulgeni* lease is not based on the contract to deliver possession contained in the lease deed, but on the completed title to possession acquired under the lease. The period of limitation applicable to such a suit is that provided in article 144 of schedule II of the Limitation Act

Benson & Miller J. J

Mogera Nandi v. Parameswara Udpa 31 Mad., 51.

———**Art. 169**—*Applicability*—*No service on respondent*—*service without declaration under sec. 82 C. P. C. No good service*.—Art 169 of the Limitation act has no application to cases where the respondent had no notice of the appeal itself.

Where the respondent refuses to accept service or cannot be found, it is the duty of the Court, before proceeding with the appeal, to declare that the notice had been duly served, and there is no sufficient service in law where there has been no such declaration under Sec. 82 C. P. C.

Benson & Munro J.

Venkobachar v. Rughavendrachar 18 M. L. J. 96.

—————**Arts. 178, 179**—*No limitation as long as proceedings initiated by decree-holder are pending—Fresh application barred if presented more than three years after removal of bar.*—Where the bar to execution proceedings is removed by the order of a lower Court, the fact that an appeal is preferred against such order will not, when execution is not stayed in consequence of such appeal, prevent limitation from running against the execution-creditor until the disposal of the appeal. A fresh application for execution presented more than three years after the date of the order of the lower Court will be barred by limitation. The dismissal of an execution-petition without notice to the parties and without removing the attachment made thereunder, is a mere direction to the officers of Court to remove the application from the pending list. The execution proceedings are not closed thereby and must be considered pending. The decree-holder's right to apply for their continuance accrues from day to day and will not be barred till three years have elapsed after such proceedings cease to be pending. When an execution application is dismissed as aforesaid, a subsequent application, in so far as it asks for the sale of properties already attached under the former application is one for continuance of proceedings and not a fresh application for execution. *Kedarnath Dutt v. Harra Chand Dutt*, 8 Cal., 420, followed.

Miller & Munro J. J.

Chalavadi Kotiah, v. Poloori Alinelammah 3 M. L. T. 319

= 31 Mad., 71.

—————**Art. 178 (4)**—*Application to take some step in aid of execution—Payment of process fees.*—Held that the mere payment of process fees on an application for execution, unaccompanied by any application asking the Court to take some specific action, will not have the effect of giving a fresh starting-point for limitation within the meaning of article 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Thakur v. Katwaru Ram* 22 All., 358 followed. *Vijayaraghavalu Naidu v. Srinivasalu Naidu* 28 Mad., 399 distinguished.

Aikman & Karamat Husain J. J.

Sho Prasad v. Indar Bahadur Singh, A. W. N., 1908, 74.

Madras City Municipal (Act III of 1904) Sch. VI, cl. 1—"Pro-

polled”—Trailer cars are vehicles with springs and are “propelled” within the meaning of the words as used in sch. VI of Madras Act III of 1904.

Benson & Munro J. J.

The Madras Electric Tramways Co. v. The Madras Corporation,—18 M. L. J. 149.

Madras District Municipalities Act (IV of 1884) s. 26—*Power of Municipality conferred by the section wider than that conferred by Regulation VII of 1817 on Revenue Board—Municipality has under s. 26 of Act powers of actual management and can maintain suit on bonds in the name of the superseded trustee without obtaining an assignment.* The powers conferred on Municipality in respect of charitable endowments when action is taken under section 26 of the District Municipalities Act are wider than those conferred on the Board of Revenue by Regulation VII of 1817. Under the Regulation, the Board has only powers of superintendence but Municipalities have, under the Act, powers of actual management in addition to the power of superintendence vested by the Regulation in the Board of Revenue. It is competent to a Municipality which has taken action under section 26 in respect of a charitable endowment to maintain a suit on a bond standing in the name of the superseded trustee without obtaining an assignment of such bond.

Miller & Munro J. J.

The Chairman, Municipal Council of Rajahmundry v. Susurla Venkateswarlu 31 Mad., 111.

Madras Local Boards Act (V of 1884), s. 95—*Act throws on Local Boards the duty of making necessary improvements in roads by necessary implication—Board not liable for damage caused by such works, when not negligently carried out.*—The duty imposed on District Boards by section 94 of Madras Act V of 1884 to construct and maintain roads casts on them by necessary implication the duty of constructing and maintaining the necessary culverts and tunnels under them. This implied power to construct and maintain such culverts and tunnels is not merely permissive, to be exercised only when no injury will be caused to others thereby, but an imperative duty cast on the Board by the Act. No suit for injunction or damages will lie against the District Board for any injury caused by the construction or improvement of such works, when such works or improvements are necessary in the interest of the public for the maintenance of the road and there is no negligence in the carrying out of the work. *Sankara Vadivelu Pillai v. Secretary of State for India in Council*, 28 Mad., 72, distinguished.

White C. J. & Miller J.

Aiyasami Aiyar v. The District Board, Tanjore 31 Mad., 117.

Mahomedan Law—Gift—Validity of deed of gift—Marz-ul-maut
Death illness, what constitute—Apprehension of death—Concurrent judgments on fact—Privy Council, practice of.—The question in this case was whether a deed of gift was invalid by reason of the Mahomedan law of *marz-ul-maut*, relating to gifts made in death illness: *Held*, that whether the donor was or was not under apprehension of death at the time the deed was executed was rightly treated by the Courts below as the decisive test. That was a question essentially of fact and of the weight and credibility of evidence: and there being concurrent judgments on the evidence that there was no such apprehension, the Judicial Committee declined to interfere, particularly as it appeared that the reasons given by the Courts established a large preponderance of probability in favour of the conclusion at which they had both arrived. P. O.

Fatima Bibi v. Ahmad Baksh, 35 Calo. 271.

—————**Gift—Mushaa gifts of undivided shares in Companies and shares in Freehold property in Rangoon—Whether law of Mushaa applicable to Mahomedans residing in Rangoon—Death-bed Gifts—Gifts made not under sense of imminence of death.** In suits brought to set aside certain deeds of gifts executed shortly before his death by a Mahomedan in Rangoon in favour of his widows and minor children, as being invalid because they were death-bed gifts, and because they were contrary to the law of *mushaa* (prohibiting gifts of undivided shares in property which is divisible):—*Held* in accordance with the principles laid down in *Muhammad Mumtaz Ahmad v. Zubaida Jan*, I, L. R. 11 All. 460; L. R. 16 I. A. 205, that assuming the law of *mushaa* to apply to the succession of Mahomedans residing in Rangoon that doctrine was not applicable to shares in Companies nor to shares in freehold property in a large commercial town. *Held*, also, on the facts, upholding the concurrent decisions of gift were not executed under pressure of the sense of the imminence of death, and were therefore valid. (1907). P. C.

Ibrahim Goolam Ariff, v. Saiboo, 35 Calo., 1.

—————**Amil-bil-hadis—Hanafi sect—Mosques—Right of worship by different sects—Dedication to particular sect.** Mahomedans of the *Amil-bil-hadis* or *Wahabi* sect have the right to worship in a mosque built primarily for the use of and used, as a general rule, by members of the *Hanafi* sect, and cannot be debarred from the exercise of such right on the ground of their views in the matter of ritual being different. *Quaere*: Whether a special dedication of a mosque to any particular sect of Mahomedan would be in accordance with Mahomedan Ecclesiastical law, *Atq*

Ullah v. Azum-Ullah, 12 All., 404, followed. *Brett & Chitty J. J.*

Abdus Subhan v. Korban Ali, 35 Cal. 294.

———**Gift—Hiba bil mushaa**—Possession. Held that what is known to Muhammadan law as a *hiba bil mushaa*, or gift of an undivided joint property, is a valid gift if the donee obtains possession. *Aikman J. Mohib ullah v. Abdul Khalik*, A. W. N., 1908, 104.

Malbar Law.—Decree against *Karnavan*—Subsequent division into *Tawazhi Procedure*—The members of a *tarwad* cannot escape liability for debts or decrees binding on the *tarwad* by dividing themselves into *tavazhies*, but where the *Karnavan* of the original *tarwad* has ceased to represent them they cannot be bound by proceeding in execution of a decree against him unless they are separately represented in the execution proceedings. *Benson & Wallis J. J.*

Kunhi Kannan v. Mannay Setha, 18 M. L. J. 132.

Malbar Compensation for Tenants' 'Improvements Act (VII of 1887) s. 7, sec. 18, (Act I of 1900)—Scope of—Improvements effected after 1886 in virtue of contracts made prior to 1886. Sec. 7 of the Malbar Compensation for Tenants' Improvements Act, VII of 1887, (represented as sec. 19 of Act I of 1900) precludes parties from contracting themselves out of the Act by any contract made after January 1st 1886, but it does not affect the validity of contracts made prior to that date, whether the improvements were made before or after January 1886 in which case the rate of compensation is governed by the terms of the contract itself. *F. B.*

Raaddipurayait v. Neroth Kunhi, 18 M. L. J. 98=3 M. L. T, 291.

Mortgage—Construction of decree on mortgage—Decree under secs. 86 and 88, Transfer of Property Act—"Future interest"—Power to give interest after date fixed for payment—Interest to date of realization of mortgage debt. In a suit for foreclosure a conditional decree was made under sections 86 and 88 of the Transfer of Property Act for the sum due for principal and interest on the mortgage, and for cost, for redemption on payment of the amount so due, "with future interest at 7 annas per cent. per mensem from the date of the suit, or before the 18th March 1897," and for sale on default of payment: and the decree was made absolute on 25th June 1898:—Held, on the construction of the decree, that on such default the plaintiffs were entitled in execution to "future interest at 7 annas per cent. per mensem" after the date fixed for redemption, and up to the date of realization of the entire amount. *Mahrarajah*

of *Bharatpur v. Kanno Dei*, 23 All. 181; L. R. 28 I. A. 34, and *Sundar Koer v. Rai Sham Krishen*, 34 Calc., 150; L. R. 34 I. A. 9 followed.

B. C.

Gokuldas v. Ghasiram, 35 Calc. 221.

—————*Usufructuary mortgage—Ouster of mortgagees—Adverse possession.* One of the purchasers of the equity of redemption in a usufructuary mortgage ousted the mortgagees and took possession of the entire mortgaged property which he retained for more than twelve years; but it was found that he never denied the mortgagors' title, and that the mortgagors had no right to present possession. Held, that there was no adverse possession as against the other mortgagors, although there was as against the mortgagees, and that the right of redemption was not lost: the ouster of the mortgagees did not entitle the plaintiff to re-enter into possession.

Bannerjee & Aikman J. J.

Ismadar Khan v. Ahmad Husain, 30 All. 150.

—————*Transfer of Property Act s. 59—Attestation—Acknowledgment of signature—Attestation, whether valid—Succession Act, S. 50 cl. (3).* Held (1) that there is no attestation unless the signature is made in the presence of the attesting witness, who in the future will be able to testify that it was done, (2) that the provisions of Sec. 50 (cl. 3) of the Indian Succession Act do not apply to other acts, as though they appeared in an interpretation Act, and the absence of a similar provision for the acknowledgment of execution in sec. 59 of the Transfer of Property Act shows that attestation of actual execution is necessary.

Girindra v. Bejoy R. 26 Cal. 246. *Abdul v. Saliman* 27 Cal. 190, *Sasi v. Chandra* 33 Cal. 864, *Dinamoyar v. Bon* 7 Cal. W. N. 160, followed. *Ramji v. Bai Parvati* R. 27 Bom. 91, and *Ganga v. Shinw* R. 26 All. 69, Dissented from.

Wallis & Sankaran Nair J. J.

Shamu v. Abdul 3 M. L. T. 300.

—————*Usufructuary—by occupancy tenant—surrender—devolution of equity of redemption.*—Where a valid usufructuary mortgage on his holding has been effected by an absolute occupancy tenant and the tenant surrenders to the landlord, the equity of redemption passes to the latter and is not extinguished by his merely accepting rent from the mortgagee in possession. In such a case the tenancy has in consideration of law a continuance, and the mortgagee cannot in equity be allowed both to remain in possession under the mortgage and to repudiate the liability to be redeemed which is characteristic of a mortgage.

Baliram v. Ram Rao 4 N. L. R. 57.

———**T. P. Act—Sections 92 and 94—Mortgage—Redemption—**
Subsequent suit for profits received by mortgagee barred.—In a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagee right up to the time of actual redemption or sale, as the case may be. A mortgagor therefore who has obtained a decree for redemption and paid in what was found by the decree to be due from him cannot subsequently sue for profits realized by the mortgagee in possession which might and ought to have been taken into account at the time of passing the decree.
 Richards J.

Kashi v. Bajraj Prasad, 30 All. 36.

Mutt.—*Head of—Power to bind mutt property—Income of mutt in the hands of successor liable for debts properly contracted*—The position of the head of a mutt in reference to the mutt is analogous to that of the manager of an infant heir. Where debts are contracted by the head of a mutt for purposes binding on the mutt, a decree in respect of such debts may be passed against his successor charging the income of the mutt property though such debts were not expressly charged on the income of the mutt.

White C. J. & Miller J.

Srimath Daivasikamani v. Noor Mahomed, 31 Mad., 47.

Negotiable Instruments Act (XXVI of 1881) secs. 7, 32 53, 64, 115, 134—Bills of exchange—Acceptance by drawee—acceptance taken on copies of bills not a valid acceptance—Bills endorsed over to a drawee in case of need—Holder in due course.—The drawee can maintain the suit without disclosing his principal, as a holder in due course—Bills accepted need not be dishonoured and protested—Liability of acceptor at maturity of the bills—Assent not signed on bills but on copies—Assent no valid.—The plaintiff sued to recover on certain bills, drawn on the defendant and endorsed over to the plaintiff, the defendant having failed to pay them. In one of the suits, the acceptance by the defendant was signed upon the original bill but in others it was merely on copies of the bills. The lower appellate Court threw out the first suit on the grounds that the plaintiff was suing as agent for the London firm Francis Times & Co. without disclosing his principals, so that the suits were defective in form: and, secondly, that the suits were not competent as the bills had never been dishonoured and protested. The remaining suits were dismissed on the ground that the acceptance was written on copies of the bills.

Held, (1) that the bills were indorsed over to the plaintiff by the Banks in whose favour they were drawn so that he was a holder deriving title from the holder in due course, and as such he was competent to sue under sec. 53 of the Negotiable Instruments Act, 1881.

(2) That the bills were made payable in Bombay, and consequently, under ses. 134 and 32 of the Act the acceptor became liable at the maturity of the bills. Presentment is not necessary to charge the acceptor. The acceptor was the principal debtor and his liability was independent of presentment.

(3) That whereas s. 7 of the Act lays down the acceptance shall be signed either upon the bill or upon one of its parts, the defendant's assent was signed only upon copies of the bills; and thus a material requirement of the law omitted with the result that there was no valid acceptance.

Jenkins C. J. & Batchelor J.

Ardeahir v. Khushaldas 10 Bom. L. R. 268.

Oude Civil Courts Act, s. 17—*Possession of land by demolition of house thereon or on payment of compensation for it—Valuation of suit for purposes of jurisdiction.* The defendant held some land of plaintiff on rent and built a house upon it disregarding the latter's notice to him to quit the land. The plaintiff sued for the demolition of the building and the restoration of the land to him. He went on to say that, if for any reason the Court could not order the demolition of the building, a decree might be passed in his favour for possession on payment of compensation for the building. The building was found to be worth more than rupees one thousand; and the Munsif, in whose Court the suit was filed, held that the building was the part of the subject matter of the suit within the meaning of s. 17 of the Oudh Civil Courts Acts and returned the plaint for presentation to the Proper Court on the ground that the value of the subject-matter of the suit exceeded Rs. 1,000.

Held, that the subject-matter of the suit was the value of the property which the plaintiff said he was entitled to take possession of, and that the case should be restored to the Munsif's file and disposed of according to law.

Chamier J.

Shaikh Nawab Ali v. Durga, 11, O. C. 451.

Parties—Suit for rent—Effect of all mutwallis not being made parties to a rent-suit—Where the persons liable to pay rent are *mutwallis*, it is essential that all the *mutwallis* should be brought before the Court as defendants, inasmuch as *mutwallis* stand in the position of trustees.

Maclean C. J. & Geidt J.

Abdul Rab Chowdhury v. Eggar, 35 Calc., 183.

Practice.—Madras High Court—Original sides rules, 1902, Rule 533
Advocates—Right to appear and plead. *Held*, that there is no rule of law which prevents a party acting by a Vakil on the Original Side

of the Madras High Court, from being heard by counsel, that is to say by an Advocate, appearing from him. Wallis J.

K. Mungiah Chetty v. K. Ramiah Chetty, 3 M. L. T. 322.

———*Right to begin*—*Defendants supporting plaintiff must begin before defendants opposing him.* If some of the defendants in a suit support wholly or partly the plaintiff's case they must address the court and call their evidence before the defendants, really opposed to the plaintiff's case, commence their case.

The word plaintiff means every person asking relief against another person. Russell J.

Haji Bibi v. H. H. Sir Sultan Mahomed, 10 Bom L. R. 327.

———*Interpleader—Suit to redeem mortgage against two parties claiming mortgage money—Appropriate relief.* When a mortgagor was about to pay of the mortgage amount to an assignee off the mortgage, the mortgagee disputed the assignment and also claimed to be paid the mortgage amount. The mortgagor thereupon filed a suit, impleading both the mortgagee and the assignee as defendants. The plaint contained, in substance, a claim for redemption, but it also prayed that the defendants should be required to interplead concerning their claim to the mortgage amount, and that the mortgagor should be damnified in consequence of the loss of the original mortgage deed. Prior to the hearing the defendants agreed that the assignee was entitled to receive the mortgage amount, the suit was dismissed as not being maintainable as an interpleader suit, *inter alia* because plaintiff claimed an indemnity and consequently had an interest; on appeal.

Held, that it was erroneous to treat the suit as only one of interpleader. In as much as the plaint also contained in substance a claim for redemption that was the appropriate relief, in the circumstances. *Vyvyan v. Vyoyan*, (1861) 4 De. G. F & J. 183 followed.

Jenkins C. J. & Batchelor J.

Jaggannath v. Talka, 10 Bom. L. R. 314.

———*Relief granted which was not asked for by the plaintiffs—Appeal—Court fee.* The plaintiffs in a suit for sale on a mortgage were granted by the first Court a relief for which they had not asked and which could not properly have been granted to them without an amendment of the plaint. On appeal by one of the defendants the appellant was made to pay an additional court fee corresponding to the relief granted to the plaintiffs. The plaintiffs respondents were also required to make good the deficiency in the court fee paid in the first Court. This

the plaintiffs declined to do unless the decree was confirmed in its entirety. *Held*, that the plaintiffs were not entitled to retain the full benefit of the first Court's decree nor liable to pay the additional court fee; and the appellant might on application to the proper authority obtain a refund of the excess court fee which he had been erroneously compelled to pay.

Stanley C. J. & Burkitt. J.

Indar Sen Singh v. Rikhai Singh, 30 All. 103.

Pre Emption—Wajib-ul-arz—Construction of document—“Shurkayan-i shikmi.” The *Wajib-ul-arz* of a village (Kandhla) in the Muzaffargarh district gave a right of pre-emption, first to *shikmi* co-sharer (*Shurkayan-i-shikmi*), secondly, to share-holders descended from a common ancestor (*Shurkayan i-jaddi*), and thirdly, to *khewatdars* in the mahal (*Khewat daran-i mahal*). The mahal was divided into seven *patties* and the land in dispute was situated in *patti Khail thok Bhuria*. The pre-emptors were co-sharers in *patti Khail*. One of the vendees was a co-sharer in the mahal, but not in *patti Khail*. *Held* that, regarding the whole context of the *wajib-ul-arz*, the expression *shurkayau-i-shikmi* was intended to denote relatives by blood and not co sharers in any subdivision of the mahal, and the plaintiffs were not therefore entitled to pre-emption.

Stanley C. J. & Burkitt. J.

Behad Sing v. Mubarik-un-nissa, 30. All. 77.

Probate—application for—Official Trustee—Executor—Renunciation—Retraction—Probate and Administration Act (V of 1881) s. 17. Where the Official Trustee expressed his intention of renouncing probate but subsequently retracted:—*Held*, that no formal renunciation having been made, he was not precluded from applying for probate. *In the Goods of Robert Morant* L. R. 3 P. & D 151; *Golab Sundari Dassi*, 15 C. W. N. (Notes) clv., followed. *Held*, also, that there was nothing under the Official Trustee from being appointed an executor and acting as such.

Chitty J.

In The Goods of Manik Lal Seal 35 Calc. 156.

Public Demands Recovery Act (Beng. I of 1895), ss. 10, 12 31—Notice, service of—“Adult,” meaning of—The Collector of 24-Pragnas—Certificate Officer. A person above the age of 16 years at the date of the service on notice is an “adult” within the meaning of s. 31 of the Public Demands Recovery Act. When a notice under s. 10 of the Public Demands Recovery Act actually reaches the judgment-debtor and he contests the claim, it cannot be said that the notice was not validly served because the person on whom the service was made is not proved

to be residing with the judgment-debtor the object of serving the notice being to enable the judgment-debtor to contest his liability. The Collector of 25-Pragnas is the proper Certificate Officer to enforce a certificate under the Act against immoveable property in Calcutta.

Hari Charun Singh v Chandra Kumar Dry, 35 Calc. 246.

Railway Act ss. 77, 140—Notice of claim—“May be directed”—*Claim against Railway administered by a Railway Company.*—A notice of claim for short delivery was served upon the Traffic Manager of a Railway administered by a Railway Company, and not on the Agent:—*Held*, that such a notice was not a sufficient compliance with the provisions of sections 77 and 140 of the Indian Railway Act. The word “may” in section 140 of the Indian Railways Act means that if a plaintiff is desirous of serving an effective notice of claim, the notice *must* be directed to the Manager or Agent as the case may be. *Great Indian Peninsula Railway Company v. Chandra Bai*, 28 All. 552 followed. *Periannan Chetti v. South Indian Railway Company*, 22 Mad. 137, dissented from.

Mitra & Casperes J. J.

Nadir Chand Shaha v. Wood, 35 Calc. 194.

Religious Endowments Act XX of 1863 ss. 14 and 20—Appointment of new trustee—Civil Procedure Code, s. 539—Held that section 14 of Act No. XX of 1863 confers no power upon the Court to appoint a new trustee, manager or superintendent of a religious endowment. If it is necessary to invoke the aid of the Court for the purpose of appointing a new trustee, the proceedings provided by section 539 of the Code of Civil Procedure must be resorted to.

Bannerji & Richards J. J.

Sada Shankar v. Hari Shankar, A. W. N., 1908, 101.

Stamp—Agreement—Memorandum of agreement Stamp Act (II of 1899) Sch. I, Art. 5, cl. (b)—Account—Stipulation to pay interest—Acknowledgment of debt.—An account written on a sheet of paper signed by the debtor and addressed to the creditor, and also containing a stipulation to pay interest, is not a mere acknowledgment of a debt on which a stamp duty of one anna is leviable under Art. I, Sch. I of the Indian Stamp Act, but an agreement or memorandum of an agreement which requires a stamp of 8 Annas, under cl. (b) of Art. 5, Sch. I of the Indian Stamp Act. *Laxumi Bai v. Ganesh Raghunath*, 25 Bom. 373, followed.

Rampini, Casperes & Sharfudin J. J.

Mulchand Lala v. Kashibullav Biswas, R. 35 Calc. 111.

Trade-Mark—Mark indicating manufacturer—Infringement, calculated to deceive—Passing off goods—Injunction—Admissibility of evidence of intent to deceive.—The general principle applicable to “passing off” is that nobody has the right to represent his goods as the goods of somebody else *Reddaway v. Banham* (1908) A. C 199 followed. In an action for an injunction to restrain the use of a trade-mark, if the defendant's goods on the face of them and having regard to the surrounding circumstances are calculated to deceive, evidence to prove the intention to deceive is inadmissible as being unnecessary, the rule being that a man must be taken to have intended the reasonable and natural consequences of his own acts. *Saslehner v. Appollinaris Co.*, (1897) 1 Ch. 893, followed. Where a trade-mark has come to be recognised in the market as denoting goods prepared by the plaintiff, and where the defendants have deliberately adopted a trade-mark identical with that of the plaintiff:—*Held* that such adoption is calculated to deceive and that an injunction should be granted.

Fletcher J.

Munna Lal Serowjee v. Jawala Prasad 35 Calc. 311.

Transfer of Property Act (IV of 1882) s 99—Sale in execution of Decree—Money-decree—Sale of mortgaged property—Setting aside sale—Confirmation of sale—Fraud—Civil Procedure Code s. 244.—A sale held in contravention of the terms of section 99 of the Transfer of Property Act is not a nullity, but an irregular sale liable to be avoided merely on proof that the terms of that section have been contravened. The application to set aside such a sale must be made under section 244 of the Code of Civil Procedure, and must be made before confirmation of the sale unless the applicant proves that owing to fraud or other reasons he was kept in ignorance of the sale proceedings preliminary to sale.

F. B.

Ashutosh Sikdar v. Behari Lal Kirtania, 35 Calc. 61.

Trust—Religious endowment—Uncertainty—Income of villages to be applied to “charitable purposes” at a dharamshala which the settlor had founded.—By a deed of trust or *bhentnama*, the owner of seven villages settled the income thereof to the extent of Rs 500 a month to be applied to “charitable purposes” at a dharamshala which he had founded. In course of time one of the villages mentioned in the deed of trust was alienated by a person who was at the time acting as trustee. *Held*, on suit by the trustees to have the sale cancelled and to recover possession of the village, (1) that the trust was not void for uncertainty, and (2) that it was not competent to the court in the suit as framed to declare that the village in suit was charged with a proportionate part of the total income of the seven endowed villages. *Ranchordas Vandravandas v. Parvatibai*, I. L. R., 23 Bom., 725, referred to.

Stanley C. J. & Burkitt J.

Gordhan Das v. Chunni Lal 30 All. 111.

THE LAWYER.

1st JULY 1908.

Part I,

DIGEST OF RECENT INDIAN CASES (CIVIL)

Act XIX of 1841, sec. 1, 3 and 4—Intestate's property—Jurisdiction of Judge—Review—Rectification of mistake by successor of Judge who passed the order—Revision. Before the procedure provided by Act XIX of 1841 can be set in motion the title and bona fides of the applicant must be *prima facie* clear; it must be manifest that the party complained of had no lawful title to possession, and if the applicant were referred to a regular suit, would be a serious sufferer as by the risk, of waste or misappropriation or by his inability to prosecute his rights when out of possession.

Reid J.

Rayji v. Lal Chand, 7 P. L. R. 358.

Administration suit—Estate belonging to a living Hindu—Civil Court—Competency to entertain the suit.—An Administration suit brought to administer the estate of a living Hindu debtor cannot be maintained in a civil Court.

Bai Maherbai v. Magan Chand, 29 Bom, 96=6 Bom. L. R. 823, explained. *Chandavarkar & Heaton J. J.*

Gangaram v. Nagindas. 10 Bom. L. R. 519.

Agra Tenancy Act, section 22—Acts (Local) 1901—11—Occupancy holding—succession.) Under the Agra Tenancy Act of 1901 the personal law of the parties concerned is no longer applicable to the case of succession to an occupancy holding, but the holding descends to all the male lineal descendants in the male line of descent of the last owner, without exclusion, by the nearer of the more remote.

Stanley C. J. & Burkitt J.

Bhura v. Sahab-ud-din, 30 All. 128.

———**S. 117—Question of proprietary title—Jurisdiction—Civil and Revenue Courts.**) *Held*, that the question whether a tenant, defendant in a suit for ejectment, is a tenant of one kind or another is not a question of proprietary title within the meaning of section 177 of the Agra Tenancy Act, 1901. *Chhitar Singh v. Rup Singh*, Weekly Notes, 1906, p. 247, dissented from.

Knox & Aikman J. J.

Niranjan v. Gajadhar. 30 All 188.

Appeal—Order Refusing to file Agreement to refer to arbitration—Appeal—Civil Procedure Code, s. 523. *Held*, that an appeal lies against an order refusing to file an agreement to refer to arbitration.

Evans & Griffin J. O.

Kalka Bakhsh Singh v. Suambar Singh. 11 O. C., 116)

———**Award, application to file, order refusing—Civil Procedure Code, section 525.** An appeal lies against an order refusing to grant an application to file an award under section 525 of the Civil Procedure Code.

Brett & Chitty J. J.

Sheoshaimahton v. Kirtarathbhatagat, 7 Cal., L. J. 486.

———**Appellate Court.—Power to make co-defendants liable upon appeal by a Defendant—Mortgage—Suit.** In an appeal by Defendants Nos. 2 to 8 against the decision of the first Court in which the real contest was whether Defendant No. 1 who was joined as a Respondent with the Plaintiffs or Defendants Nos. 2 to 8 were liable for the mortgage debt, the appellate Court has power to alter the decree of the 1st Court so as to make Defendant No. 1 liable and to direct that a decree to recover the mortgage debt against Defendant No. 1 be made in favour of plaintiff.

Brett & Coxe J. J.

Ishwardhary v. Bibi Sahabzadi, 12 C. W. N. 720.

———**Order returning Plaintiff for presentation to proper Court—Submission to the order—Right of appeal, effect on** Where a plaint was returned for presentation to the proper Court having jurisdiction and the plaintiff submitted to the order and presented the plaint to such Court, *held*, that it was not now open to him to appeal from the order returning the plaint.

Evans, J. C.

Suraj Kunwar (Rani) v. Sardar Karam Singh, 11 O. 98.

Arbitration Act—Oral submission—Necessity for submission in writing—Award on oral submission—Validity—C. P. Code, sec. 375—

Adjustment of suit—Award on oral submission not an adjustment of suit. The parties to an administration suit consented (at the hearing), to its being referred to the commissioner to take the usual accounts and to determine their representative shares. Account and objections were filed before the Assistant Commissioner, and the parties appeared before him, when it was orally agreed, to save the costs of a lengthy enquiry, that the Assistant Commissioner should deal summarily with all matters in dispute and draft terms by which the parties were to be finally bound, and the Assistant Commissioner personally explained to defendants 1 and 6 that they would be bound by his decision even if he decided to give them one rupee. To this they agreed. The Assistant Commissioner in due course arrived at a decision but defendants 1 and 6 considered that it awarded them an insufficient amount and declined to be bound by it. Upon application being made by a plaintiff that an adjustment of the suit might be recorded under sec. 375 of the Civil Procedure Code, on the basis of the Assistant Commissioner's decision.

Held, that there had been no adjustment of the suit. There had been no written submission to arbitration as provided by s. 4 of the Indian Arbitration Act, and consequently, there had been no legal and valid reference to arbitration and the Assistant Commissioner's award (for it really was an award and nothing else) had no legal foundation and could have no legal consequences. As there had been no reference to arbitration and no award, there had been no adjustment.

Semble, that the Indian Arbitration Act applies to such an arbitration. Where a special procedure is provided for extraordinary extra judicial methods of settling disputed claims. *Semble*, that it was the intention of the Legislature that the procedure and no other was to be followed. *Samibai v. Pranji*. (1895) 20 Bom. 304, and *Pragdas v. Girdhardas*, (1901) 26 Bom. 76, commented on and distinguished. *Beaman J.*

Rukhanbai v. Adamji, 10 Bom. L. R. 366.

Bengal Tenancy Act (VIII of 1885), section 21.—Ejectment suit for, Cultivating raiyat—Leases, construction of—Occupancy right, accrues in what land. Under the provisions of section 21 of the Bengal Tenancy Act, if a tenant is an occupancy or settled raiyat in respect of some lands in a village, he is entitled to possession as an occupancy raiyat of the whole of the land he holds in the village, provided he holds them (that is, the lands other than those of which he is an occupancy or settled raiyat) as a raiyat. But if he holds them as a tenure-holder, his occu-

pation of some lands as a raiyat will not give him the rights of a raiyat in other lands.

Rampini & Brett J. J.

Bajrangirant v. M. H. Mackenzie, 7 Cal, L, J. 475.

———ss. 91, 188—*Application for measurement by a landlord who is realising his rent separately, whether maintainable—Joint owner—Joint landlord. Held*, that if one set of landlords obtains separate kabuliats entering into separate contracts for rent with the tenants such landlords cease to be joint landlords with the other co-proprietors of the land. They become joint owners and not joint landlords. *Held*, further, that such a landlord is entitled to make an application for measurement of the land comprised in his estate under section 91 of the Bengal Tenancy Act.

Mittra & Casperz J. J.

Jogesh Prokash Ganguli v. Maniraddi, 85 Cal. 417.

Bundelkhand Encumbered Estates Act I of 1903—sections 2 and 12—Joint decree—Execution of decree—Effect of some out of several joint judgment debtors taking advantage of the Act. Five or of six joint judgment-debtors took the benefit of the Bundelkhand Encumbered Estates Act, 1903. A notification was issued under the Act, but the decree-holders did not make any claim within the time prescribed. *Held*, that the decree-holders could not recover from the judgment-debtor who had not taken advantage of the Act any thing more than his proportionate share of the judgment debt.

Aikman & K. Husan J. J.

Makund Rao v. Janki Bai. 30 All. 141.

Burmese Law.—Pre-emption. Pre-emption is an inseparable incident of the Buddhist Law of Succession. The right extends to a Burmese Buddhist whom who has succeeded to her husband's share or interest in ancestral property.

Shaw J. C.

Nga Tin v. Nga Shaw, 14 Burma. L. R. 41.

C. P. Rent Law (IX of 1883), Sec. 43—C. P. Tenancy Act, 1891, s. 45—Transfer of part of. When a transfer of occupancy holding was effected without the consent of the landlord at a time when the rent law in force was Act IX of 1883 as amended by Act XVII of 1889, the Civil Courts have jurisdiction to entertain a suit for ejectment. But it is otherwise after the passing of the Central Provinces Tenancy Act of 1891.

The change made in the law in this respect in 1891 is not of procedure only, it affects substantive rights.

Section 43 of the Tenancy Act of 1891 refers to transfers of entire holdings and not of a portion only. So long as the original tenancy subsists, the landlord has no right to re enter and oust the persons, who are on the land by license from the tenant. *Stephen & Mookerjee J. J.*

Isharam Singh v. Nilmany Bahida, 7 C. L. J. 499=12 C. W. N. 636.

Cause of Action—Survival of—Law as to. *Held*, that sec. 89 of the Probate and Administration Act V of 1881, contains the law on the subject of a cause of action surviving to the representative of a deceased plaintiff and the principal underlying the rule laid down in the section is applicable to the criminal proceedings under section 500 of the I. P. Code, having regard to the narrowness of time between a prosecution and a suit for damages.

Clarke C. J. & Reid J.

Ishardus v. Emperor, 3 P. W. R. 21.

ChamPERTY and Maintenance—Agreement opposed to public policy—Inadequacy of price for property to be recovered by suit.) There is no law in force in India similar in its effect to the English Law of Champerty and Maintenance, so as to render void an agreement which would, were such English law applicable, be considered champertous. *Ram Coomar Coondoo v. Chunder Canto Mukerjee*, 2 Calc. 233; L. R. 4. A. 23; *Kunwar Ram Lal v. Nil Kanth*, L. R. 20 I. A. 112, 20 Calc. 843, *Achal Ram v. Kazim Husain Khan*, 27 All. 271; L. R. 32 I. A. 113, followed. An assignment of property said to be worth three lakhs, by persons claiming to be the next reversioners on the death of a female owner, for a consideration of Rs. 52,600 of which sum Rs 600 was paid at the time of the execution of the deed and the balance payable in proportion to the success of a suit by the assignees and assignors to recover the property, for the prosecution of which suit the assignee was to supply the funds, *held*, not to be a transaction contrary to public policy and void on that ground by reason of the provision for payment of the purchase money. Whether it was an unfair and unconscionable bargain by reason of the inadequacy of the price was a question between the assignors and assignee which it was unnecessary to decide in a suit in which the assignors did not repudiate the transaction, but asked that effect be given to it and for that purpose joined the assignee as plaintiff in the suit.

(P. C.)

Bhagwat Dayal v. Devi Dayal. 35 Cal. 421.

Charity—Will—Gift charitable purpose—Unnecessary and useless object—Cy-pres doctrine—Trust incapable of being carried out at testator's death—Diversion of funds to useful and beneficial purpose—Power of Court.)

On the authority of *In re Campden Charities* and of other cases it is clear that when under altered circumstances, through lapse of time or through other causes, it appears to the Court that the charity provided by the donor could not be carried out literally in terms of his directions with any benefit whatever to the objects of his benefaction, the Court ought not to hesitate to give its sanction to a scheme which will carry out the charitable intentions of the donor to be gathered from the instrument establishing the charity, as nearly as possible to the original intentions of such donor.

Each case in which an application is made to divert charity funds into other channels *cy-pres* must necessarily depend upon its own facts and circumstances and upon the evidences adduced before the Court.

Davar. J.

In the matter of Hormasji Framji Warden. 32 Bom. 214.

Civil Procedure Code (Act XIV of 1882), s. 13—Competency of Court to try the previous and the subsequent suit—Concurrent jurisdiction. Under the present Code of Civil Procedure, in order to establish the plea of *res judicata*, it has to be shown that the Court of concurrent jurisdiction which decided the former suit was a Court of jurisdiction competent to try the subsequent suit. *Toponidhee Dhirji Gir Gosain v. Sreeputti Sahance*, 5 Calc. 832, distinguished. *B* sold a certain property to *C*; *A* brought a suit against *B*, *C* and others, in the Court of the Munsif, for recovery of possession of property so conveyed, and to have the *kobala* granted by *B* to his vendee set aside; the suit was decreed in favour of *A* on the ground that *B* had no share in the disputed land and that no relationship existed between *A* and *B*. In a subsequent suit brought by *B* in the Court of the Subordinate Judge, for a declaration of his title to an eight-anna share in a certain property, a portion of which was covered by the aforesaid *kobala*, and for joint possession thereof with *A*, defence was that the suit was barred by *res judicata*, or at least it was so with respect to that portion of the disputed property, which was the subject-matter of the previous litigation:—*Held*, that the suit was not so barred. *Bhugwanbutti Chowdhrami v. A. H. Forbes*, R. 28 Calc. 78, distinguished. *Stephen & Mookerji. J. J.*

Shibo Raut v. Baban Raut, 35 Calc. 353=7 C. L. J. 470.

———**ss. 13 (Ex. 11) and 43.—Cause of Action—Suit for a share in inheritance—Dower, subsequent claim for.**) *Held*, that the cause of action for a claim for dower is distinct from the cause of action for a share in the inheritance.

Held further, that there is no legal obligation to include a claim for dower in a suit for inheritance.

(*Riasat Ali v. Hasin Banu* 21 Calc. 157 followed *Dost Muhammad Khan v. Said Begam* 26 Calc. 81 distinguished.)

Evans & Griffin, J. C.

Kaisar Begam v. Nizam Ahmad (11 O. C. 69).

—————**Sec. 13, (Explan II)—*Res judicata***—*First suit decided on a preliminary point—Second suit on a point not decided in the first suit.* Explanation 2 to S. 13 of the Civil Procedure Code, must be read in conjunction with and as part and parcel of the leading provisions of the section itself; according to those provisions, several conditions are necessary to constitute a matter *res judicata*. Two of those conditions are: (1) that the matter must have been in the former suit directly and substantially in issue; and (2) that it must have been heard and finally decided in that suit.

The explanation does no more than lay down that if a matter which might and ought to have been made a ground of defence in the former suit, is not made such a ground, it shall be dealt with as falling within the first of the above mentioned conditions. That is, the omission shall have the same effect given to it as it would have had if it had been made a ground of defence. But to constitute *res judicata* a second condition is necessary; it must have been finally decided. And if the former suit went off on a preliminary ground, not calling for adjudication on any other ground of defence, whether raised or not, those grounds remain undecided.

The same effect must be given to a matter which was made a ground of defence in the former suit.

Chandavarkar & Knight J. J.

Abdulakhan v. Khan Miya, 10 Bom. L. R. 380.

—————**S. 50—*Bar of limitation—Amendment***. When a plaintiff does not satisfy requirements of Sec 50 of the C. P. Code by stating what is in his opinion the ground upon which he intends to get over the bar of limitation he ought not to be precluded from taking another and not inconsistent ground should he be later advised that the later is a true ground.

Beaman J.

Yokub v. Bai Rahimatbai, 10 Bom. L. R. 346.

—————**Sec. 53.—*Amendment of plaint—Conversion of character of suit—Claim for injunction converted to one for possession***. The amendment of the plaint by altering a claim for injunction to one for possession is not open to the objection that the character of the suit is thereby changed.

Reid C. J.

Harjimal v. Pokhardas, 9 P. L. R. 360.

—————**S. 158**—*Scope of.* Held, that the provisions of sec. 158 of the Civil Procedure Code should only be resorted to when no other provisions of the Code are applicable to the case, and they do not permit of summary dismissal of the suit without considering the evidence or record produced by the plaintiff. *Shah Din. J.*

Kartar Devi v. Surasti, 9 P. L. R. 299.

—————**Ss. 202, 623**—*Clerical errors in a judgment.* Held, that words used through inadvertent clerical errors in a judgment can be corrected under S. 202, Civil Procedure Code, and no application for review under S. 623 of the Code is required for the purpose. *Chatterji J.*

Mulu Ram v. Barhmi, 3 P. W. R. 196.

—————**S. 216**—*Partition suit—Preliminary order for partition—Final decree—Appeal—In appeal both can be questioned—Practice—Pleadings.* It is open to an appellant, in an appeal against the final decree in a partition suit, to question the correctness of the preliminary order or decree for partition when no appeal was preferred against such order within the time by fixed law. *Khadem v. Emdad*, 29 Cal. 735, followed.

It is not open to an appellate court, to make out a new case for the first time in appeal contrary to the pleadings in the first court.

Chandavarkar & Heaton J. J.

Mulla v. Khatija, 10 Bom. L. R. 514.

—————**S. 230**—*Execution of decree—Limitation—Decree for money.* A decree for recovery of money by sale of specific property is a decree for money within the meaning of S. 230 of the Civil Procedure Code. 28 Mad. 224, 473, followed. 16 All. 418, 25 All. 541, 24 Cal. 473, 25 Cal. 583, 27 Cal. 285 not followed. *Robertson J.*

Ram Gopal v. Teja Singh, 9 P. L. R. 369.

—————**Sec. 232—cl. (b)**—*Decree directing separate amounts with separate sets of proportionate costs to be recovered against defendants—Transfer of the decree in writing to one of the defendants—Application by the transferee to recover the amount due by the other defendant.* A decree directed that a certain sum with proportionate costs be recovered against N and a certain other sum with proportionate costs be recovered against A. Subsequently A took a transfer of the decree in writing and applied for execution of the decree against N to the extent of the sum decreed against him. The application having been rejected under section 232, clause (b), of the Civil Procedure Code.

Held, reversing the order, that section 232, clause (b), of the Civil Procedure Code, 1882, was not applicable. Though the direction against N and the separate direction against A were contained on one and the same piece of paper and were passed in the same suit, still for all that they were decrees for separate sums of money and might equally well have been passed in separate suits. The fact of their being on one piece of paper cannot control the matter.

Jenkins C. J. & Batchelor J.

Anant Vinayak v. Nagappa Subraya, 32 Bom. 195.

———**Secs. 232, 244, 372 and 617**—*Decree for an injunction to protect land—Sale of the land—Subsequent suit by the purchaser for an injunction—Execution of the former decree can not lie.* A obtained an injunction against B restraining him from obstructing A in the exercise of his right of way to his (A's land) over B's land. A subsequently sold his land to C. B similarly obstructed C. C then brought a suit against B for an injunction in terms similar to that formerly obtained by A. B contended that C's remedy, if any, was by way of execution of the decree obtained by A.

Held, as the injunction did not run with the land, there was in the circumstances of the case, no bar to the plaintiff's suit.

Jenkins C. J. & Batchelor J.

Jamshetji Manekji v. Hari Dayal, 32 Bom. 181.

———**ss. 244, 278**—*When judgment debtor objects as trustee, claim falls within s. 378 and the order on such claim is not appealable—Decree directing sale of Waqf property valid.* When the judgment debtor or his representative objects to the attachment and sale of property in execution on the ground that he holds the property in trust for some third person or a charitable institution, the claim must be investigated under the provisions of sections 278—283 of the Code of Civil Procedure and not under section 244. An order passed on such claim must be challenged by a regular suit and not by appeal. A decree directing the sale of waqf property may, in certain circumstances, be valid. Such a decree is not against public policy and is not necessarily void.

Boddam & Munro J. J.

Budrudeen Sahib v. Abdul Rahim Sahib, 31 Mad., 125.

———**ss. 244, 278**—*Execution of decree—Claims to attached property by shebaitis.* Judgment debtors, in their capacity as shebaitis can maintain an application under s. 244 of the Code of Civil Procedure and get an adjudication of the question raised by them. Where judgment-debtors make applications both under s. 244 and s. 278, they do

not lose any rights *qua* their application under s. 244 because of their mistake in applying under s. 278 of the Code of Civil Procedure.

Maclean C. J. & Coxe,

Jogendra Nath Sarkar v. Gobinda Chandra Dutt, 35 Cal. 364.

———**Sec. 257A.**—*Rent decrees—Instalment executed by some of judgment-debtors in decree-holder's favour in respect of decretal amount Enforcement by suit—Agreement to give time.* Where two of the judgment-debtors executed a *kestibundee* bond in favour of the decree holder hypothecating certain property in order to secure the decretal amount, and the bond further provided that on failure of payment of the instalments the decree-holder would be competent to execute the decree.

Held—That it was more than a mere agreement to give time within the meaning of sec. 257A, Civil Procedure Code and although the agreement to give time not having had the sanction of the Court was incapable of enforcement, there was nothing to taint the rest of the agreement with illegality or prevent the decree-holder from suing upon it.

Maclean C. J & Doss J.

R. Belchambers v. Sarat Chandra Ghose, 12 C. W. N. 674.

———**s. 258**—*Transfer of Property Act ss. 88 and 89—Civil Procedure Code—Execution of decrees—Alleged payment out of Court not certified.* Applications for an order absolute for sale under section 89 of the Transfer of Property Act, 1882 are applications for the execution of the decree under section 88 of the Act. To such application section 258 of the Code of Civil Procedure is applicable, and bars the recognition of payment made out of Court in pursuance of the decree unless such payments are certified to the Court in the manner prescribed by the section. *Vaidhinasamy Ayyar v. Somasundram Pillai* (28 Mad., 478) followed. *Mallikarjuna Sastri v. Narasimha Rao* 24 Mad., 412 and *Hatem Ali Khundkar v. Abdul Ghaffur Khan* (8 C. W. N., 102) dissented from.

Hakim Singh v. Ram Singh, A. W. N., 1908, 103.

Aikman & Karamat Husain J. J.

———**s. 266**—*Execution of decrees—Attachment—Mortgage—Right of mortgagor in respect of mortgage money promised but not paid.* Where money promised as a loan by a mortgagee is not advanced in full, the mortgagor is only entitled to recover, if anything, damages for non-payment of the balance: he cannot sue for specific performance of the agreement to lend the full sum promised, and the non-payment of a portion of the loan does not constitute a debt which can be the subject of attachment and sale under

section 266 of the Code of Civil Procedure. *The South African Territories Company, Limited v. Wallington* (1898, A. C., 309) referred to.

Stanley C. J. & Burkhitt, J.

Phul Chand v. Chand Mal, A W. N., 1908, 105.

———s. 278 and 283—*Objection dismissed for default, effect of.* Held, that an order disallowing a claim under s. 278, Civil Procedure Code, for want of prosecution is conclusive unless a suit is brought under s. 283 within one year from the date of the order. *Kalar Singh* 1, C. W. N. not followed. Chamier J. C.

Gayadin v. musammatt Baij Nathi (11 O. C. 180)

———Sec. 295—*Order under revision.* The Chief Court as a general rule of practice refuses to revise an order passed under sec. 295 of the Civil Procedure Code on the ground that the order passed by the lower Court under the section may be set right by suit.

Johnstone & Hurry J, J.

Fazal Din v. Narain Sing, 9 P. L. R. 363.

———Sec. 311.—*Holding sale 3 hours before the appointed hour* Effect of. Merely holding a sale 3 hours before the appointed hour does not vitiate the sale; it is a mere irregularity and sale is not invalid unless it is proved that substantial loss resulted therefrom 7 All., 676, dissented from. 21 Cal., 60, 20 Mad., 159 followed. Shaw J. C.

Karathan v. Palanppa, 14 Bur. L. R. 6.

———S. 335—*Decree—Execution—Resistance to possession—Obstruction by manager of a joint Hindn family—minor co-parceners not bound by manager's acts after partition.* V, as a manager of a joint Hindu family, offered obstruction to defendants in taking possession of certain lands in execution of decree. Some time after this, the minor step-brothers of V having separated from V and the lands to which the obstruction was offered having been allotted to be the minor's share. V took no further part in the miscellaneous proceeding that followed the obstruction, and on the 6th August 1898, the Court passed an order under sec. 335 of the Civil Procedure Code, in favour of defendants. The minors brought a suit on the 11th November 1903, to establish their title to the lands. Both the lower Courts dismissed the suit on the ground that it was barred under Art. 11 of the Limitation Act, in as much as it was instituted more than a year after the order passed under sec. 335 of the Civil Procedure Code.

Held, that the order was no bar to plaintiff's suit, since V did not represent

the minors when the order under sec. 335 of the Civil Procedure Code was made.

Batchelor J.

Shidappa v. Venkaji, 10 Bom. L. R. 550.

—ss 367, 588 (18)—*Dispute as to who is the legal representative of a deceased appellant—Appeal.* Held, on a construction of section 367 of the Code of Civil Procedure, that a dispute as to who is the legal representative of a deceased appellant is not confined to the case of rival claimants to represent the deceased. *Subbayya v. Saminadayyar*. 18 Mad., 496) followed.

Aikman & Griffin. J. J.

Hanmant Singh v. Ram Gopal Singh A. W. N., 1908, 139.

—s. 407 and 409—*Application for Leave to sue as Pauper—When good prima facie title to property in suit not established—*In the matter of an application for leave to sue as a pauper, it was pleaded that the applicant had grossly over-stated his claim, and documents were filed which bore out this contention. Several adjournments were allowed in order that the applicant might establish a *prima facie* claim to the share in the villages in dispute but he was unable to do so.

Held, that a person, who applies for leave to sue as a pauper, must make out that he has a good subsisting *prima facie* cause of action, capable of enforcement in court and calling for an answer.

Chamier & Griffin J. J.

Sheopal Singh v. Sukh Karan Singh. (11. O. C. 67.)

—s. 494—*Order for injunction without notice to opposite party, Legality of*) Held that an order granting an injunction without notice to the opposite party and without giving any reason for adopting such course is contrary to the express provisions of s. 494, Civil Procedure Code.

Chamier & Evans J. C.

Sanwal Singh and others v. Narpal Singh 11 O. C. 151.

—Sec. 503, 503, cl. (24).—*Receiver's accounts—Orders in passing—Appeal.* The direction which a Court gives on passing a Receiver's accounts are not appealable under cl. 24 of sec. 588 of the Civil Procedure Code.

Rampini & Sharfudin J. J.

Rani Kashabati Kumari v W. O. Mac Gregor, 12 C. W N 648.

—s. 522, 526—*Private arbitration—Award made a rule of Court—Appeal* When an award made in a private arbitration has been made a rule of Court and a decree passed thereon no appeal will lie except so far as the decree is in excess of or not in accordance with the award. In

this respect there is no difference between a decree based upon a private award and a decree based upon an award made through the intervention of the Court. *Mustafa Khan v. Phulja Bibi* 27 All. 526, distinguished.

Banerji & Richards J. J.

Bahadur Singh v. Negi Puran Singh, 30 All 151

———s. 549—Security for costs—Non Compliance with order for security—Appeal rejected—Application to restore appeal—application refused. Held that no appeal will lie from an order refusing to re-admit an appeal which had been rejected under section 549 of the Code of Civil Procedure on account of non-compliance with an order to furnish security for costs. *Lekh v. Bhauna*, 18 All, 101, followed. *Kuar Balwant Sing v. Kuar Doulat Singh*, 13 I. A., 57, distinguished.

Aikman & K. Husain J. J.

Firozi Begam v. Abdul Latif Khan. 30 All, 143

———Ss. 551, 574—Provisions of section 574 not applicable to appeals dismissed under 551. The provisions of section 574 of the Code of Civil Procedure do not apply in their entirety to the case of an appeal dismissed under section 551 of the Code. *Burkitt & Aikman J. J.*

Saminhansan v Piran, 5 A L. J. P 331.

———Sec. 562—Remand—Appeal from order of remand after decision of the suit in accordance therewith. Held, that no appeal shall lie from an order of remand passed under section 562 of the Code of Civil Procedure, if such appeal is filed after the suit has been decided in compliance with the order of remand and no appeal is preferred from the decree in the suit. *Salig Ram v. Briz Bilas*, 29 All. 659 and *Madhusudan Sen v. Kumini Kanta Sen*, 32 Calc., 1023, followed.

Aikman & Karamat Husain J. J.

Gulzari Mal v. Kabir-un-nissa, A. W. N. 1908, 76,

———Sec. 562—Remand—Preliminary point—Decision on some of the issues involved in the case. Held, by the Full Bench that the words " preliminary point " as used in section 562 of the Civil Procedure Code, mean a point the decision upon which is sufficient for the disposal of the suit.

F. B.

Abdul v. Muhammad Zia-ud-din, 9 P. L. R. 293.

———s. 568—Fresh evidence admissible when inherent defect apparent on examining the evidence—Document purporting to be executed by two persons but signed by only one is not invalid.) The legitimate

occasion for the admission of additional evidence by the Appellate Court under section 568 of the Code of Civil Procedure arises only when on examining the evidence as it stands, some defect becomes apparent. Where fresh evidence is discovered outside the Court, such evidence can be imported into the case on an application under section 623 of the Code. *Kessowj Issur v. Great Indian Peninsula Railway Company*, (81 Bom., 381), followed. *White C. J. & Miller J.*

Krishnama Chariar v. Narasimha Chariar. 31 Mad., 114.

—————**Sec. 574—Issues—Court should raise proper issues—Practice.** *Per Chandavarkar J.*—" We wish to impress upon the lower Courts of appeal the necessity of always raising point for determination, as required by the provisions of the Civil Procedure Code, in every appeal before it is argued. because they narrow the points in controversy and leave little or no room for complaint in second appeal. *Chandavarkar & Knight J. J.*

Govind Datta v. Yesuji, 10 Bom, L. R. 492.

—————**Sec. 575—Whether the third Judge is confined to the point referred or whole case is opened.** Where an appeal is referred by a bench of two judges under section 575 of the C. P. Code, it is open to the Judge to whom the appeal has been referred to deal with the whole appeal and he or they are not confined to dealing with and giving a decision on the point of law upon which the judges who first heard the appeal have differed. *F. B.*

Maung Po v. Maung Po, 14 Bur. L. R. 51.

—————**Sec. 578—Procedure—irregularity—Disposal of a suit on a Sunday.** *Held*, that the fact that a suit was decided on a Sunday did not vitiate the decree. *Semble* that the Lord's Day Act (21 Geo. III, Cap, XLIX) does not apply to India. *Stanley C. J. & Burdett J.*

Sheoram Tiwari v. Thakur Prasad, 30 All. 136.

—————**Sec. 583—Restitution—Right to apply not confined to parties to appeal—Rights accruing during litigation.** It is not necessary that a person asking for restitution under sec. 583 C P. C should have been a party to the successful appeal if the appeal is in effect and substance in favour of such a party. Under section 583 of the C P. C. the parties must be placed in the position they were previously in irrespective of any other rights accruing to any of the parties during the litigation. *Mitra & Casperez J J.*

Ganga Prasad v. Brojo Nath Das 12 C. W. N. 642.

—————**s. 595—Final order—Preliminary point—Res judicata—**

"Evidence of essential facts"—*Civil Procedure Code, s. 562. Held, that s. 562 of the Civil Procedure Code applies to a case decided on a point of law on such materials as are available before the parties prove disputed documents or adduce oral evidence.*

On reference to I. L. R., 17 All., 112, *held*, that by the words "evidence of essential facts" Their Lordships meant evidence of facts essential to the disposal of the case and not merely essential to the question which has been decided.

Held, further, that an order of remand which will not necessarily have any effect on the ultimate decision of the case was not a final order within the meaning of s. 596 of the Code of Civil Procedure.

Chamier & Evans J. O.

Jamna Prosad v. Radha Kishen (11 O. C. 169.)

Companies Act, s. 149—Contract Act, s. 221,—Lien of agent under s. 221 of the Contract Act not affected by winding up order under s. 149 of the Companies Act.) An agent who is in possession of properties belonging to a Company under an agreement by which he was to advance monies for working expenses has, in the absence of a contract to the contrary, a lien on such properties under section 221 of the Contract Act for the amount disbursed by him and section 149 of the Companies Act does not authorise the Court to deprive the agent of his possession of the security. The making of a winding up order will not affect his right to continue in possession and make the necessary disbursements as long as his possession continues; and as regards such disbursements also he will have the same lien and stand in the position of a secured creditor against the properties of which he was in possession as agent when dispossessed by order of Court.

Wallis & Miller. J. J.

Chidambaram Ghattiar v. The Tinnevely Sarangapani Sugar Mills Company, Limited. 31 Mad., 123.

Common carriers—Nature of liability—Implied covenant of a carrier by water. The obligation imposed by law on common carriers has nothing to do with contract in its origin but it is a duty cast upon common carriers by reason of their exercising a public employment for reward, and a breach of the duty, is a breach of the law and an action founded on common law lies for it independent of a contract. A carrier by water impliedly engages that his vessel shall be water tight.

Fox C. J. & Irwin J.

Malodi Sethalingam v. Ranjan, 14 Bur. L. R. 37.

Compromise decree—*Going beyond subject-matter of suit* A decree passed on a compromise cannot be regarded as *ultra vires* simply because it goes beyond the subject-matter of the suit and contains other conditions; if these other conditions are the considerations for the compromise of the subject matter of the suit, they must be incorporated in the decree.

Mitra & Casperes J. J.

Gobindra Chundra Paul v. Dwaaka Nath Paul, 7 Cal. L. J. 498

Contract Act, s. 16. 19A—*Unconscionable bargain*—*Parties not on an equal footing*—*Defendant not aware of the nature of the transaction*—*Undue influence*—*Contract voidable*.) To render a contract voidable on the ground of undue influence there must be evidence of undue influence as required by section 16 of the Indian Contract Act. A high rate of interest which would induce a Court of equity to give relief against a bargain as being on that account hard and unconscionable is not by itself sufficient evidence of undue influence. There must be additional circumstances and when there is evidence of such additional circumstances they should be considered in the light of justice and equity. When the parties to the transaction are not on an equal footing, when it appears that the borrower was not aware of the real nature of the bargain, so that he put his signature to a document which in fact imposed very different terms to those appearing on the face of it, when the actual rate of interest is many times higher than what appears on the document, when the borrower when pressed for payment for what appears due on such a document has to renew on still more exorbitant terms, all these are additional circumstances sufficient to make out a *prima facie* case of undue influence so as to throw the onus on the lenders to disprove it.

Macleod. J.

Chatring Mulchand v. Lieut. R. H. Whitchurch Bom. 208.

—————**s. 73**—*Vendor and purchaser*—*Contract to sell immoveable property*—*Damages for such contract*.) The rule in *Flareau v. Thornhill* (1776) 2 W. Bl. 1378 is not law in this country. Section 73 of the Contract Act imposes no exception on the ordinary law as to damages, whatever the subject-matter of the contract. In cases of breach of contract for sale of immoveable property through inability on the vendor's part to make a good title the damages must be assessed in the usual way unless it can be shown that the parties to the contract expressly or impliedly contracted that this should not render the vendor liable to damages. *Pitamber Sundarji v. Cassi bai* 11 Bom. 272, distinguished.

Macleod J.

Ranchhod v. Manmohandas, 32 Bom. 165.

Co-sharers—*Suit for rent by one only for his share.* One of the co-sharer landlords who used to collect his share of rent separately can sue to recover arrears or rent due to him in respect of his fractional share.

Madan C. J & Doss J.

Govindra Chandra v. Sree Nal Pal Chowdhry, 7

Cal. L. J. 812.

Costs.—*Mortgage decree—Execution of decree for costs—Mortgaged properties—Transfer of Property Act s. 90.* A decree-holder in executing a mortgage decree must, for the purpose of recovering the costs awarded by the decree proceed in the first instance against the property mortgaged; and in the event of the same being found insufficient he can proceed against properties other than the mortgaged property. The order for costs is a part of the mortgage decree. *Rutnessur Sein v. Jusoda*, 14 Cal. 185 and *Damodar Das v. Budh Kuar*, 10 All., 179 distinguished. *Maghdal Fatima v. Lalta Prasad*, 20 All. 523, followed. *Geidt & Chitty J.*

Rajkumar Singh v. Sheo Nrrain Sahu, 35 Cal. 481.

Court Fees Act, (VII of 1870) Art. 17 (6) sched I. s. 7 cl. (4) c.—*Suits Valuation Act, s. 8—Suit for registration of document under s. 77 of Registration Act does not fall for purposes of Court fees within s. 7 cl. (4) c of the Court Fees Act, but under art. 17 (6) of sched. II of the Act—Such suit to be valued for purposes of jurisdiction on the value of the property.* A suit for registration of a document under sec. 77 of the Registration Act is not, for the purposes of payment of Court fees, a suit for a declaratory decree with consequential relief within section 7, clause (4) c of the Court Fees Act, but is a suit in which it is not possible to estimate at a money value the subject-matter in dispute, within Article 17 (6) of schedule II of the Act. The Court fee payable in such cases is a fixed fee of 10 rupees. *Jantoo v. Radha Kanto Dass*, 8 Cal., 515. followed. *Savrimuthu Pillai v. Alagiam Pillai*, 12 M. L. J. 88 followed. The question of valuation for purposes of jurisdiction is not in such cases to be decided under section 8 of the Suits Valuation Act. The value in such cases will be the value of the interest created by such document. *Rambrishnamma v. Bhagamamma*, 13 Mad. 56 followed. **F. B.**

Ramu Aiyar v. Sankara Aiyar, 31 Mad., 89.

—**Sec. 17—Alternative reliefs for distinct causes of action—fees payable on.** Held, that s. 17 of the Court Fees Act applies not only to a case in which cumulative reliefs are sought but also to a case in which the plaintiff claims alternative relief in respect of different claims of action.

Neela Kandhan v. Anantha Krishna Aiyar 30 Mad. 67 followed.

Chamier & Greenan J. O.

Jawahir Singh v. Baldeo Prasad, 11 O. C. 173.

Evidence Act. s. 92—*Oral evidence to prove that a deed purporting to be a mortgage was intended to be a sale, admissibility of*—*Representatives in interest of parties to the deed.* Held, that oral evidence is not admissible between the parties to a deed which purports to be a mortgage, or their representatives in interest, to prove that it was intended to be a sale.

Chamier J. C.

Zaki-ud-din Khan v. Akram-ud-din Khan. (11 O. C. 95.)

———**Sec. 92.**—*Admitting oral evidence against law*—*Revision C. P. Code, s. 622.* Admitting oral evidence in direct contravention of sec. 92 of the Evidence Act is an illegality within the meaning of sec. 622, C. P. Code.

Fox C. J.

Jowan v. Ah. y., 14 Bur. L. R. 58.

Execution of decree—*Sale of ancestral property*—*Civil Procedure Code, s. 320*—*Rules framed by Local Government*—*Application under Rule 17 (XIIIA).* One of several co-owners of ancestral property which had been sold by the Collector under the Rules framed by the Local Government under section 320 of the Code of Civil procedure applied under Rule 17 (XII) to have the sale set aside upon the ground of material irregularities in the conduct of the sale causing substantial loss. Another of such co-owners, whilst the first application was pending, applied under Rule 17 (XIIIA) to have the sale set aside, making at the same time the necessary payments into Court required by the Rule.

Held that upon the presentation of the latter application under Rule 17 (XIIIA) the Collector was bound to set aside the sale, and was in no way precluded from so doing by the existence of the former application under Rule 17 (XII). *Nit Lall Saou v. Sheikh Kareem Bux* (I. L. R., 23 Cal., 686) and *Pareesh Nath Singha v. Nabogopal Chattopadhyaya* (I. L. R., 29 Cal., 1) referred to.

Stanley C. J. & Burkitt. J.

Tulsi Ram v. Izzat Ali, A. W. N., 1908. p. 77.

———**Transfer to another court**—*Power of court, to which decrees has been transferred, to grant permission to continue execution proceedings begun upon the application of a decrees-holder since deceased*—*Civil Procedure Code, s. 232.* Held, that the Court to which a decree has been transferred cannot give permission under section 232 of the Civil Procedure Code to continue execution proceedings begun upon the application

of a decree-holder, since deceased. Such permission can be granted only by the Court which passed the decree. *Chamier & Griffin J. C.*

(*Nazhat-ut-Dowla Abbas Hassan Khan v. Prince Wala Kadar Husain Ali Mirza*. 11 O. C., 112)

Fraud—Allegations of—Particulars constituting fraud should be given—Issue in cases of fraud—Practice.—It is an elementary rule of law that where fraud is set up, particulars of it must be given and it must be based upon a specification of the acts relied upon as constituting fraud.

Per Chandavarkar, J.—It is a matter of supreme importance and necessity that a case of fraud should not be the subject of a mere vague allegation in the plaint or written statement; but that it shall be supported by particulars; and that if that condition is not complied with, the party relying on a case of fraud, shall not be allowed to raise that case in the form of an issue. It is generally advisable, indeed, when framing an issue on the point of fraud, to set forth in the issue itself a brief statement of the fraud alleged, or at least to refer to the passage in the pleadings where it is specified. If this be made an invariable practice, the door will be closed to vague and indiscriminate allegations.

Chandavarkar & Knight J. J.

Balaji v. Gangadhar 32 Bom. 255.

Guardian and minor—Arbitration—Appointment of guardian not to be settled by arbitration.—The appointment of a guardian to a minor, not being a matter of private right as between parties, is not a question which can be settled by reference to arbitration.

Aikman & K. Husain J. J.

Mahadeo Prasad v. Bindesri Prasad, 30 All. 137.

Haq-i-Chaharum,—Liability of vendee to the Landlord for—Wajib-ul-arz.—Held, that unless the right of the landlord is limited by the *Wajib-ul-arz* to a right to claim *haq-i chaharum* from the vendor, the right can be enforced against the vendee also. *Chaimer & Saunders J. C.*

Utri Din v. Munshi Prag Narain (11 O. C. 64).

High Court Rules, Rule 80 (A I)—Pauper, petition to sue as—Prothonotary's decision—Application to Judge in Chambers—Right to be heard.—The Plaintiff filed a petition to be allowed to continue her suit in *forma pauperis*. The petition was heard by the Prothonotary under Rule 81 of the Bombay High Court Rules. The petitioner applied under Rule 80A-1 to have the matter adjourned into Court.

Held, that the party dissatisfied with the Prothonotary's decision is entitled to apply to the Chamber Judge to have the matter adjourned to him, and that the Judge in Chambers is bound to decide the matter for himself.

Davar J.

Meghbai v. Poonjabai 32 Bom. 163.

High Court—Jurisdiction over Sumbalpur District—Extension of High Courts jurisdiction to place not within jurisdiction of any High Court, if *ultra vires*—Interpretation of Statute—Reference to repealed Statute—28 and 29 Vict C. 15 Dt. 3.—Under sec. 3 of 28 and 29 Vict C. 15 the Governor General in Council can extend the jurisdiction of a High Court or any portion of its jurisdiction to a place not originally within the jurisdiction of any High Court.

The proclamation whereby the Calcutta High Court was authorised to exercise jurisdiction over the Sumbalpur District when it was transferred from the Central Provinces to Bengal was not *ultra vires*.

The repealed provisions of sec. 18 24–25 vict. C. 105—were referred to as throwing light on the construction of sec. 3–28–29. vict C. 15.

Stephen & Mookerjee J. J.

Baleswar Bagarti v. Bhagarathe Das 12 C. W. N. 657

Hindu Law—Adoption—Custom—Pleadings—succession. Right of collaterals of adoptive father to succeed to the property of adopted son.—Under Hindu Law a daughter's son cannot be adopted in the dattaka form by twice-born classes.

The family of the adopted son is not altered and no relationship with the adoptive father's collateral relations is established when adoption is not according to dattak form, but according to established custom prevailing among non agriculturists or *kritrima* form.

Chatterji J.

Baij Nath v. Shamboo 9 P. L. R. 354=3 P. W. R. 209.

———**Adoption.—Will—Adopted son to take after widow, of good character—Contingent interest—Uncertainty—Implied contract on adoption not to make Will.**—A Hindu by his will gave his widow a life interest in a house and provided that on her death their adopted son should have the house provided he was of good character and obedient to the widow.

Held—That the condition *viz.* that the adopted son should be of good character and be obedient to the adoptive mother and should survive her, was a condition precedent to the adopted son taking under the Will and was not void for vagueness.

The adopted son had a contingent reversionary interest in the house during the widow's lifetime and this was inalienable.

Rampini and Sharfuddin J. J.

Surendra Nath Ghose v. Kala Chand Bannerjee 12 C. W. N. 668

—————**Guardianship**—*Joint Hindu family—Minor co-parceners—Guardian of the family property appointed by the Court—Guardianship ceases when one of the co-parceners attains majority—Guardianship goes to the adult parceners.* Where a joint Hindu family consists of co-parceners who are all minors, the co-parceners forming one group, the Court has jurisdiction to appoint a guardian of the property of that group as a whole. But, when, subsequently, one of that group arrives at the age of majority, the guardianship of the person appointed by the Court ceases, and the Court is bound to hand over the joint family to the adult co-parceners, notwithstanding the fact that other co-parceners are minors. *Virupakshappa v. Nilgangawa*, 19 Bom. 309, applied. *Bindaji v. Mathurbai*, 30 Bom. 152, followed. *Chandavarhar & Knight J. J.*

Ramchandra v. Krishnarao, 32 Bom, 259.

—————**Joint family**—*Manager can represent the family in suits brought on behalf of it—A co-parcener can also represent it if his action is consented to or ratified by his co-parceners—Certificate from conciliator obtained by one enures for the benefit of all.* The rule of Hindu Law is that a joint family is represented in all transactions or concerns with the outside world by its Karta (manager) provided they are for the benefit or necessity of the family, and that any co-parcener, who does not occupy that position of manager, can represent and bind the family in such transactions or concerns, provided he was either previously authorised to represent it, or, in the absence, of such authority, the other co-parceners subsequently by words or conduct ratified his acts.

Accordingly, the co-parceners of a joint Hindu family are entitled to maintain a suit to which the provisions of sec. 47 of the Dekhan Agriculturists Relief Act apply, on the strength of a conciliator's certificate obtained under section 46 of the Act by only one of those co-parceners, who was either the managing member of the family at the time the certificate was obtained, or, who, though not manager, obtained it with the consent and on behalf of the joint family acting as its agents.

Chandavarkar & Knight J. J.

Vishnu v. Babaji, 10 Bom. L. R. 505.

—————**Joint Hindu Family.** *Held*, also that the members of a joint Hindu family must be regarded, so far as concerns the dealings of the

family with persons outside it, as but one juristic person.

The managing member of a joint Hindu family sold a property exclusively belonging to one member of the joint family and the proceeds of the sale were brought into the common purse for the benefit of the family. *Held* that on the sale of that property being set aside after the separation of that member, he could recover the whole property on payment of the whole purchase money, but that he could not claim to have it by paying only a share of the purchase money proportionate to his share in the joint family property—partition.

Stanley C. J. & Karamat Husain J.

Himwat Bahadur v. Bhawani Kunwar, A. W. N. 1908, 143.

———*Joint Hindu family, right of a member of, to represent other members of the family—Suit for the recovery of the whole of the family property by one member. Held*, that a member of a joint Hindu family could not insist upon representing the other members in a suit brought for recovery of the property belonging to the whole family.

Augamuthu Pillai v. Kolandarelu Pillai, 23 Mad. 140, and *Guru-vyya Gouda z. Dattatraya Anant*, 28 Bom. 11, referred to.

Chamier & Griffin J. J.

Babu Bhan Partab Sahi v. Babu Sadhist Narain Singh, 11 O. C. 14.

———*Joint Hindu family—Foreclosure of mortgage—Sons not made parties—Right of sons to redeem—Transfer of Property Act, s. 85.* The mortgagees of a mortgage of joint family property executed by the father alone sued for and obtained a decree for foreclosure. At the time the suit instituted the mortgagees knew that there were sons and grandsons jointly interested with the mortgagor in the mortgaged property, but, notwithstanding this, they omitted to make them parties to their suit.

Held that the sons and grandsons were not precluded from instituting a suit for redemption. *Debi Singh v. Jia Ram*, 22 All. 214 distinguished.

Aikman & Karamat Husain J. C.

Ram Prasad v. Man Mohan, A. W. N. 1908, 106.

———*Maintenance—Re-marriage of widow.* During the life-time of her husband the wife of a Hindu obtained a decree for maintenance against him and the payment of this maintenance was by the decree made a charge on certain property which had been of the husband, but was then in the hands of certain donees from him. The husband died, and the widow, being permitted to do so by the rules of her caste (*halwai*), married again. *Held* that the fact of the widow having married again did

not dissentitle her from recovering maintenance from the property of her first husband.

Knox J.

Kaunsilla v. Gajadhar, A. W. N., 1908, 149.

———**Succession.**—*Mother party to murder of her son cannot succeed as heir to such son—Unchastity of mother no bar to her succeeding as heir to her son—Degradation does not involve loss of proprietary rights.* A mother who has been a party to the murder of her son, can not succeed by inheritance to the property of such son. Under the Mitakshara Law, female heirs other than the widow are not precluded from inheriting by reason of unchastity. *Kojiyadu v. Lakshmi*, 5 Mad., 149 followed. Degradation, without exclusion from caste does not involve loss of proprietary rights; neither has aggravated unchastity that effect. Per WALLIS J.—The unchastity of the widow is expressly laid down as a ground of exclusion in numerous texts, but there is no such authority in favour of excluding other females. Degradation does not affect proprietary rights of the degraded person since the passing of Act XXI of 1850. Per SANKARAN NAIR J.—The mother's claim to succession rests on consanguinity and not on religious merit and incapacity to inherit due to inability to perform sacrifices cannot therefore be presumed.

Vedammal v. Vedanayya Mudaliur, 31 Mad., 100.

———**Succession—Mitakshara—Priority between half-brother's son and full sister—Vyavahara Mayukha's view as to sister's position in the line of heirs—Balambhatta and Nanda Pandita—relative values of commentaries by—Rules of Interpretation**—In cases governed by the Mitakshara, a sister comes in as heir to a deceased Hindu immediately after the grand-mother, hence where the competition is between her and a half brother's son, the latter, being higher in the line among heirs specifically mentioned in the Mitakshara, is entitled to preference over her as heir, though it would be otherwise in cases governed purely by the law of the Vyavahara Mayukha.

The decision of Westropp C. J. *Sakharam v. Sitabai* (1879) I. L. R. 3 Bom. 358. so far as it proceeds upon Balambhatta's doctrine, is unsound; and its authority as a binding decision, where the question is between a sister and a half-brother, must be confined to cases to which the law of the Vyavahara Mayukha alone is applicable, *Rudrava v. Irava* 28 Bom. 82, explained. The commentary of Balambhatta on the Mitakshara is not regarded by Hindus in the Bombay Presidency as an authority to be accepted in the interpretation of the former work without question. These observations apply more or less to *Nanda Pandita* also.

It is a well-established rule of the Bombay High Court—that where the Mitakshara is silent or obscure, it must generally speaking invoke the aid of the Vyavahara Mayukha to interpret it, and harmonise both the works, so far as that is reasonably possible.

Chandavarkar & Knight J. J.

Bhagwan v. Warubai 10 Bom. L. R. 389.

———*Hindu widow—Payment by wife of husband's debts during his lifetime—Voluntary payment.—Held* that the payment by the wife of a separated Hindu of her husband's debts during his lifetime must be considered in the absence of evidence to the contrary as a voluntary payment, and will not support an alienation by the widow after her husband's death of the estate which has descended to her from him.

Himat Bahadin v. Bhawani 1908. A. W. N. 143.

———*Alienation by widow—position of person claiming through her.—A person who claims title under conveyance from a Hindu female heir with a limited interest, and who seeks to enforce that title against reversioners is always subject to the burden of proving not only the genuineness of his conveyances, but the full comprehension by the limited owner of the nature of the alienations she was making, and also that those alienation were justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner. The defendant's title to the property in suit depended on an alienation made in his favour by one of three Hindu ladies, who was not the heir of the last male owner, and on two subsequent deeds of sale, which it was sought to set aside in this suit, in which the real owner had joined:—Held, with reference to the earlier transactions, that the onus on the defendant had not been discharged, and that there was no satisfactory evidence that they had been authorized in any way by the real owner. Nor could she ratify them under section 196 of the Contract Act (IX of 1872) by becoming a party to the later transaction; it would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could by acts *ex post facto* charge upon the estate which she represents, obligations not originally binding upon it. Though the deeds of sale were therefore invalid, the consideration being for the most part not justified by legal necessity yet as to certain sums in both the deeds as to which such necessity was established it was held that the first Court had rightly made the decree*

for possession conditional on the payment by the plaintiff of such sums to the defendant. As the deeds were void, as such, the claim for these profits was well founded. (P. C.)

Bhagwat Dayal Singh v. Debi Dayal Sahu, 35 Cal. 420.

Husband and Wife.—*Jats*. If a Jat Husband whose action under sec. 498 L. P. Code against another is dismissed, executes in the excitement of the moment a deed repudiating the wife but on cooler consideration tears up the deed, the divorce is not complete against the husband.

Robertson & Kensington J.

Nist Isheri v. Wadhwa, 3 P. W. R. 265.

Injunction—Permanent—Blocking up of a Government Channel by a ryotwari tenant—Loss of supply of water to the lands of another tenant—Cause of action against ryat—Whether damage should be alleged and proved. The defendants blocked up the head of a Leye Channal of Government irrigating the lands of the plaintiff, whereupon the plaintiff sued for a permanent injunction to issue against the defendants. In second appeal it was contended that the plaintiff had no cause of action against the defendants, in the absence of finding that he suffered actual damage.

Held, per CHIEF JUSTICE:—That it lay on the defendants to prove that no damage was sustained and in the circumstances of the case damage must be presumed.

Held further that the plaintiff's right to water was one apurtenant to the land and no finding as to damage was necessary for the issue of injunction. *Held* per MILLER J:—That injunction should be issued if it is shown that the Act complained of was done in such a way as to be likely to damage the plaintiff, though proof of specific damage be not given. The relationship between a ryotwari tenant and Government with reference to water supply considered. *White C. J. & Miller J.*

Rama v. Subramania, 3 M. L. T. 273.

Insolvent Act (Indian) (11 and 12 Vic, c. 21), secs. 27, 26. *Jurisdiction of the Insolvent Court outside the Bombay Presidency—Person in possession of Insolvent's property can be directed to hand it over to the official Assignee.* The Court for the relief of insolvent debtors sitting in Bombay has jurisdiction to make an order under section 26 of the Indian Insolvent Act against a person residing outside the Bombay Presidency. *Jenkins C. J. & Batchelor J.*

In re Ganeshdas Panalal, 32 Bom. 198.

Judicial Officers Protection Act (18 of 1850)—*Scope of—Whether Secretary of State protected.* Held, that where a Judicial officer's action in his capacity is protected by Act XVIII of 1850 in respect of acts done by him with jurisdiction or done under the bona fide belief that he had jurisdiction the protection thus afforded to him equally extends to his Master the Secretary of State for India in Council.

Johnstone & Hurry J.

Mrs. Fox v. The Secretary of State for India in Council, 3 P. W. R. 220.

Jurisdiction—*Declaratory suit by objector against decreeholder and judgment debtor—Valuation*—C. P. Code, s. 283. The value of a declaratory suit under s. 283 of the C. P. Code by an objector against decree holder and judgment debtor for purposes of jurisdiction and course of appeal is to be taken at the value of the property attached and not the amount of the decree.
(F. B.)

Sheri Ali v. Lachman 3 P. W. R. 259.

Jurisdiction—*Exercise of by Courts—Concurrent.* When statutory rights and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters, which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Court—*Stephen & Mookerjee J. J.*

Icharam Singh v. Nilmony Bahida, 7 Cal. L. J. 499 = 12 C. W. N. 636.

———*Civil and Revenue Courts—Sui to set aside a lease of coparcenary property.* Held, that a suit brought by co-sharers against a lambar dar to set aside a lease of co-parcenary property granted by the lambar dar as in excess of his powers was properly cognisable by a Civil Court. *Jagannath v. Har Dayal*, (Weekly Notes, 1897, p. 207), referred to.

Aikman & Karamat Hussain J. J.

Nihal Chand v. Rustam Ali Khan, A. W. N., 1308, 77.

———*Waiver—Leave to sue—Letters Patent (1865) cl. 12.* Where there is no want of jurisdiction in this Court over the subject-matter of the action, but leave under cl. 12 of the Letters Patent is required before the Court can entertain the suit, the objection that such leave has not been properly obtained may be waived and will be considered to have been waived if the defendant files his written statement and applies for a commission to examine witnesses. *Moore v. Gangee*, L. R. 25, Q. B. D, 244 followed.
Fletcher J.

A. J. King v. Secretary of State for India, 35 Cal. 394 = 12 C. W. N. 705.

Jurisdiction of Civil and Revenue Courts.—*Punjab Tenancy Act (XVI of 1887), secs. 14, 17, (3) (u)*—*Landlord and Tenant*.—The plaintiff, an occupancy tenant, sued the defendant for damages for preventing him from cultivating land of his holding. It was not alleged that the defendant had been in possession of the land or had occupied it.

Held, that the suit was triable by the Civil Court. *Johnstone J.*

Mirar v. Ghanaya, 9 P. L. R. 356—3 P. W. R. 212.

———*Res-judicata*—*Suit for possession of Revenue paying land included by mistake in ejectment decree passed by a revenue Court*—*Punjab Tenancy Act XVI of 1887, section 77*. S, sued for possession of 8 kanals, 6 marlas alleging that he was occupancy tenant of 6 kanals, 18 marlas, belonging to C, and others, and had become proprietor of the remaining kahals, 8 marlas, by long adverse possession.

He took some land on lease from C, and others, who sued for his ejectment in a Revenue Court and obtained a decree, which by mistake and without his knowledge included the land in suit in the land from which he was to be ejected, and that he was ejected from it in execution of the said decree.

Held, that, the suit as framed is of the Civil Nature and that neither any provision of the Punjab Tenancy Act nor, under section 13 Civil Procedure Code, the previous decree of the Revenue Court, bars a Civil Court, from taking its cognizance.

Clarke C. J. & Reid J.

Shibdayal v. Chiragbibi, 3 P. W. R. 257.

Kathiawar.—*Execution of private decree passed against shareholders indebted to Government*—*Payment of guaranteed loans*. An application for execution of a decree having been rejected on the ground that the judgment-debtor was indebted to Government, held (in appeal from the order) that, though the execution by the decree-holders against his estate was barred by the existence of preferential claims (XIII K. L. R. 85). Yet there were two means whereby the claims of unguaranteed creditors were prevented from being unduly delayed, the first being the preparation of a budget fixing instalments of Government or guaranteed loan and the devotion of the available surplus (if any) to the payment thereof, and the second that what favourite creditors could ordinarily take without evasion or delay,, so that other less fortunate creditors would not find their just claims unduly postponed, and that, if a private creditor (who continued to enter darkhast for execution in order to save limitation) filed with his darkhast a reasonable representation requesting a Prant Officer to consider and decide whether certain property (such as an uttra) of the estate ought not to be sold to meet

preferential claims, he should entertain such representation and consider it in a sympathetic spirit, and that according to circular orders of Col. Kennedy (the late agent) he was to decide as regards what was or was not available for actual execution.

Hamchand v. Darbar Wala, 17 Kat. L. R. 379.

———*Possession of one plot—Effect of*, It cannot be concluded that because there was admitted possession of a single plot of land touching a river on the extreme North and South, there was therefore necessarily possession of the intervening waste.

In the course of certain giras case proceedings, reference having been made to a map about 30 years old, which showed that a line of cultivation was demarcated as admittedly that of the Girasias, held that, the Girasias cultivation was then admitted to be of land belonging to them, the time was a record of their admitted holding in that year, for that time could not possibly be intended to indicate any thing.

The Talukdars of Ohital, v. The Girasias of Palitana Timba, 17 Kat. L. R. 374.

Land Acquisition Act.—Compensation—apportionment of—Principal. In a proceeding for apportionment under the Land Acquisition Act, no abatement of rent can be made without the consent of the parties.

The compensation is to be apportioned between the parties according to the value of the interest which each of them parts with. The zemindar has a right to the fixed rent and the loss he sustains is of so much of of his rent, any other possible injury, such as the chance of the putnidar throwing up the land and its being diminished in value by what has been taken by Government, and still remaining as it did, liable to pay the same revenue, is not appreciable and cannot be taken into account. If there is no abatement of the rent and the putnidar continues liable to pay to the zemindar the same rent as he had to pay before, there would be nothing for which the zemindar is to receive compensation. The same rule applies to the case of lease in perpetuity with fixity of rent. *Hill & Brett J. J.*

Satis Chunder v. Rai Jotindra, 7 C. L. J- 284.

———(1 of 1894), sec. 54—*Award—Final award—Appeal—High Court.* An appeal lies to the High Court, under sec. 54 of the Land Acquisition Act, 1894, only from the final award of the Court.

Accordingly no appeal lies from an award which merely determines the amount of the gross sum payable as compensation as preliminary to the further question to whom the amount so determined should be paid.

Chandavarkar & Heaton J. J.

Ardeshir v. Assistant Collector Poona, 10 Bom. L. R. 517.

Landlord and Tenant.—*Right of tenant in the abadi on partition between co-owners not affected—Liability to pay rent.* A partition between the co owners cannot injuriously affect the right which a tenant possessed before a partition took place.

Where under a partition between co-owners the agricultural holding of a tenant fell to the share of one co-owner and his house in the *Abadi* in the share of the other, *held* that he continued to hold the house site as an apurtenant to his holding and could not be ejected.

Held, further that he was not liable to pay rent for his house site to the co-owner in whose shade his house had fallen.

Knox & Bannerji & Aikman J. J.

Sadu v. Behari Singh, 5 A. L. J. 237.

———*Concurrent leases—Landlord entitled to recover rent only as against second lessee.* *Held*, that where a lessor executes two concurrent leases of the same property, that is to say, two leases in which the term of the second commences before the term of the first has expired, the second lessee is to be taken as the assignee of the lessor's interest during the concurrent portion of the terms, and the lessor after the execution of the second lease can recover rent only from the second and not from the first issue. *Harman v. Bean*, (3 C. and K., 307) followed.

Stanley C. J. & Karamat Husain J.

Ram Anant Singh v. Shankar Singh, A. W. N., 1908, 152.

———*Denial of relation and setting up third party as lambardar in a previous suit by some of the land lords—Joint lessors, putting an end to tenancy—Transfer of Property Act, section 111—Intention to determine.* A denial of the existence of relation of landlord and tenant and setting up a third party as landlord in a previous rent suit by some of the landlords amounts to renunciation of all by the tenant. The latter, therefore, incurs a liability to have his lease forfeited. Though in England any joint tenant may put an end to his demise so far as it operates on his own shares, whether companions join him in putting an end to the whole lease or not, yet according to the Indian decisions the relation created by the several joint landlords continues until there exists a new and complete volition to change it. This is the law when the khas possession is the relief asked for against the tenant but not in cases of trespassers and tenants where khas possession is not sought for.

Where the relation of joint landlord continues, the tenancy can not be put an end to except by all the lessees acting together,

Under sec. 111 of the Transfer of Property Act, all the lessees must show their intention to determine the lease before they can succeed in a suit for ejectment.

Rampini & Sharfudin J. J.

Bhikharree Ram v. Dhakeshwar Prasad, 7 C L. J. 483.

—————*Trees—Land-holder and tenant's rights as to trees on tenant's holding.*) Held that as a general rule the property in timber growing on a tenant's holding vests in the zamindar and the tenant has no right to cut and remove such timber. But as a general rule also the zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so long as the relation of landlord and tenant subsists.

Stanley C. J. & Burkitt J.

Ganga Dei v. Badam, 30 All., 134.

—————*Co-sharer landlord—Suit for entire rent—Co-sharers made defendants—Maintainability of suit—'Landlord', who is—Assignee of land as well as of arrears of rent.*—A Co-sharer landlord is entitled to maintain a suit for the entire rent, if his co-sharers are on their refusal to join as plaintiffs, made defendants in the suit.

The person to whom the land, the rent for which is claimed, as also the arrears of rent are transferred is an assignee of the whole interest of the landlord and is a 'landlord within the Bengal Tenancy Act,

Meclean C. J. & Coxe J.

Sashi Kumar Mirbahar v. Sitanath Banerji, 7 Cal. L. J. 425.

—————*Enhancement—Contract of tenancy*—The Transfer of Property Act gives no authority to a landlord to enhance the rent of his tenant during the term of the lease, whether it be in perpetuity or for a definite term.

The word *maurasidar* does not convey the idea of a right to fixity of rent; *durmanrasi mokarari* implies fixity of rent. The right of enhancement is not an incident of every contract of tenancy.

Hill and Brett J. J.

Satis Chunder v. Rai Jatindra 7 C. L. J. 284.

—————*Madras Act VIII of 1865, sec. 7—Acceptance of muchilika* Effect of.—Mere acceptance by the landlord of a much ilika executed by the tenant is not sufficient proof that pattah has been dispensed with. *Varathachari v. Balu* 3 Mad. 258, *Narayan v. Mani* 10 Mad. 363, followed.

Benson & Munro J. J.

Naidu v. Moolupuri 3 Mad. L. T. 280.

Lease—Lessee holding over without paying rent—Tenant at sufferance—Death of lessee Representatives holding possession position of—Adverse possession—suit by lessor for possession—Limitation, suit—land previously attached in execution of decree against lessor—claim—petition by representatives of lessee, dismissal of—No fresh suit brought within one year, effect of in the present suit—Civil Procedure Code,—A tenant holding over is a tenant at sufferance unless there is any assent on the part of the landlord which could convert him from a tenant at sufferance into a tenant in the true sense of the term, either at will or from year to year or month to month as the case may be: and sec. 116 of the Transfer of Property Act, which enables the lessor or his representative, by his assent to convert a tenant by sufferance into a yearly or monthly tenant does not enable him by his mere assent to convert the representative of a tenant—by sufferance into such a tenant. If a tenant by sufferance dies and his representative enters and holds on, he holds as a trespasser and a suit for recovery of possession from such a person is governed by art 144 of the Limitation Act where the suit lands were attached in execution of a decree against A and B put in a claim petition which was dismissed but it did not appear that A was a party to the execution proceedings.

Held in a suit by A against B for recovery of these lands that the latter was not barred from asserting his right to the property.

White C. J. & Wallis J.

Vadapalle v. Dronamraju 3 M. L. T. 256.

Legal Practitioner's Act, sec. 14.—Professional misconduct, charge of, against pleader by a subordinate magistrate—Transfer of the magistrate before the date of the enquiry into the charge—District magistrate, order of, transferring the charge to the subordinate magistrate since transferred—Validity of—Warrant, issue of, by the subordinate magistrate against pleader—Pleader accusing the magistrate as acting "maliciously vexatiously and with a vindictive spirit"—Whether amounts to improper conduct of pleader. A, a pleader was charged by B, the joint magistrate of T division, with professional misconduct in a case before him. Before the date fixed for the enquiry into the charge, B was transferred, as joint magistrate of K division whereupon the District Magistrate made an order transferring the charge to the joint Magistrate of K division by B, on the ground that he had dealt with the matter in the first instance.

Held that the order of transfer of the District Magistrate [was unauthorized, and the charge must be dealt with only by the joint magistrate of T division, who had succeeded B.

A was further charged in connection with a written statement attached to a warrant, which had been issued by B as joint magistrate of K division for the arrest of A. The statement alleged that B in issuing the warrant had acted maliciously, vexatiously and with a vindictive spirit against A.

Held that there was no provision of law authorizing the issue of either a summons or a warrant against a pleader who fails to appear in answer to a charge preferred against him under sec. 14 of Legal Practitioner's Act, also that the language as used in the written statement of A, did not amount to fraudulent or grossly improper conduct in the discharge of his professional duty, within the meaning of that section. The language was no doubt to the last degree improper, but when the pleader used it he was not discharging his professional duty. He used it not in his capacity as a pleader, but as a party against whom a warrant had been issued.

White C. J. & Miller J.

In re K. R. Ramchandra Aiyar, 3 M. L. T. 237.

Letters of Administration—Joint family—Probate and Administration Act, s. 4—Separate property—Daughter, right of, in preference to first cousin.) *Held*, that letters of administration cannot be granted in respect of joint family property.

Held, further, that daughters have a better right to letters of administration in respect of the separate property of the deceased than a first cousin.

Chamier & Evans J. C.

Ajudhya v. Musammam Ram Daiya (11 O. C. 101),.

Limitation Act s. 5.—Appeal—Depositing appeal in the box put up for the purpose—Presentation—Sufficient cause—Civil Procedure Code, sec. 511—Important question of law—Punjab Courts Act VIII of 1884, Section 70 (b). *Held*, that, depositing a memo of appeal in the box put up by an Appellate Court for the purpose, amounts either to a proper presentation of it to the Court or is under 2nd clause of sec. 5 of the Indian Limitation Act, 1877, a sufficient cause for not presenting it within the time prescribed therefore; and that the presumption is that it has been deposited therein by the applicant or by any other person duly authorised on his behalf.

Held, also that whether circumstances disclosed in a particular case constitute a sufficient cause so as to bring it within the 2nd paragraph of section 5 of the Limitation Act is an important question of Law under sec. 70 (b).

Rattigan J.

Melamal v. Nathosingh. 3 P. W. R. 250.

———**S. 7—Arrears of Profits, suit for, When cause of action arose during Minority of the plaintiff—Rent Act (Oudh), ss. 129 and 132—**In a suit for arrears of profits when the cause of action arose during the minority of the appellant, it was *held* that under section 139 of the Oudh Rent Act, the appellant was entitled to the benefit of section 7 of the Indian Limitation Act,
Ohamier & Evans, J. C.

Gur Prasad v. Gokaran Nath. 11 O. C. 118.

———**S. 10—Executor when debtor—time does not run—**Where an executor who owes money to the deceased accepts the executorship, his debt becomes at once assets, and he is responsible for the amount of it. In that case no limitation would run as long as he remained executor or died, whichever happened first.
Beaman J.

Yakub v. Bai Rahimatbai 10 Bom. L. R. 346.

———**Sec. 19—Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement.**—There is nothing in the language of sec. 19 of the Limitation Act to justify the narrow interpretation that an acknowledgment under the section must be addressed to the creditor or some one on his behalf. An acknowledgment contained in an application by the judgment debtor by way of a written statement, wherein he said that he was unable to pay the amount then but would pay if time were given him, is a valid acknowledgment.

A statement in the course of a written statement by the judgment-debtor, that, "I have asked the plaintiff by a written notice to take away the sum from a third party with whom I have deposited that sum, amounts to a valid acknowledgment.
Chandavarkar & Knight J. J.

Shrinivasa v. Narhar 10 Bom. L. R. 374.

———**Sec 19—Acknowledgment—Mortgagor narrating the relationship of mortgagor and mortgagee—Mortgagor admitting its correctness of signature—Effect of the writing.** Where a mortgagor describes his mortgage as such and the latter admits in writing over his signature the correctness of that description the meaning of the admission is as plain as language can make it; thereby the mortgagee unmistakably affirms that he is described to be a mortgagee and it is a necessary implication from it that he acknowledges all the legal consequences of his position as a mortgagee one of which is his liability to be redeemed.

It is immaterial for the purposes of sec. 19 of the Indian Limitation Act, in what connection or for what purpose the description was made by the mortgagor and admitted as correct by the mortgagee—whether it was

or not made in a document, which had nothing to do either directly or indirectly with the mortgagee. The sole question is whether the writing, whatever its immediate purpose or occasion contains an acknowledgment,

Chandavarkar & Knight J. J.

Sheikh v. Jamaludin 10 Bom. L. R. 385.

———**Art 29—Moveable property wrongfully seized under legal process—limitation when begins to run.**—Article 29 of the Limitation Act, being quite general in its terms, is applicable to all cases where moveable property is wrongly seized under legal process. Time begins to run from the date of the seizure and the prescribed period of limitation is not affected by the facts that the plaintiff objected to the attachment under sec. 278 of the Code of Civil Procedure, even if the objection proceedings outlasted that period. In such a case the cause of action is complete as soon as the wrongful seizure is made; the subsequent detention is the act of the Court and nominal damages at least are recoverable at once. *Idu v Rahmatullah* 24 All. 146. distinguished. Where there are two articles of the Limitation Schedule which may possibly govern a case, the one more general and the other more particular and specific, the more particular and specific article ought to be applied.

Nagoba v. Madholal, 4 Nag. L. R. 49.

———**Arts 49 and 120.—Wrongful possession—Wrongfulness declared by the Court—Starting point for limitation.** Where the defendants *bona fide* claimed to be entitled to property and the Court afterwards declared their possession wrongful.

Held that the starting point for limitation was not the date when possession was not declared unlawful but the date of the taking of possession, which was from the first wrongful and that Article 49 of the Limitation Act applied to the case. *Mahomed Rasat Ali Khan v. Husen Baner*, 21 Cal., 157) distinguished.

Benson J.

Arunachalam Pillai v. Alagianambia Pillai, 3 M. L. T. 324.

———**Article 75—Limitation—Bond—Instalments—Power to sue for whole amount on default of payment.**) A bond payable by instalments contained a provision that in default of the payment of any one instalment it would be in the power of the creditor to sue for the whole amount due under the bond without waiting for the period provided for the payment of other instalments. *Held*, that this provision did not mean that the creditor should be compelled to sue for the whole on default of payment of one instalment nor did limitation in respect of the whole debt commence to run from

the date of the first default. *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty*, 31 Cal. 279, and *Hurri Pershad Chowdhry v. Nasib Singh* 21 Cal. 542, dissented from. *Knox & Aikman. J. J.*

Ajudhia v. Kunjal, 30 All. 123.

———**Arts. 110, 116—Royalty, suit for.** Where it was stipulated that a certain notice was to be given two months before the 30th of Charitra. *Held*, that a notice dated 1st Falgoon (13th February) was not a valid notice when the 30th Chaitra fell on 12th April, as it was not a full two months' notice but fell short of it by one day.

In view of the provisions of cl. (j) of S. 108 of the Transfer of Property Act, all lessees including lessees holding under permanent leases are liable for rent even after they have transferred their rights.

A suit for recovery of royalty upon a registered document is governed by Art. 116 and not Art. 110 of the Limitation Act.

Rampini & Sharfuddin J. J.

The Raniganj v. Jadco Nath, 12 C. W. N. 724.

———**arts. 118, 141—Invalid adoption.** *Held* also that an adoption inherently invalid need not be impugned independently of the claim brought for possession of the claim brought for possession of the adopter's estate after his death, and that such a claim does not become barred of limitation simply on the ground that no suit for declaration of the invalidity has been brought within six years under article 118 of the Limitation Act.

Reid J.

Nizam v. Bhana, 3 P. W. R. 213.

———**arts. 175 (o), 178—Limitation—Application for bringing on record the representative of a deceased respondent in second appeal.** The period of limitation for bringing in the representative of a deceased respondent in a second appeal is the one prescribed by article 175 (o) and not by art. 178 of the Limitation Act. *Susya v. Aiyakannu*, 29 Mad. 529 dissented from. *Upendra v. Sham Lal*, 34 Cal. 1020 followed.

Chandavarkar & Knight J. J.

Sheikh v. Balaji, 10 Bom. L. R. 509.

Mahomedan Law Wakf—Evidence of—Possession as owner or custodian—Onus.—One Usman Kadirno, a eunuch, died in 1900, 'possessed of immoveable property known as the eunuchs' temple. The defendant remained in occupation of the premises till 1905, when the plaintiffs who were the heirs of the deceased Usman filed the present suit in ejectment against the defendant. The defendant, *inter alia*, contended that the property in dispute belonged to the community of eunuchs of which Usman was the head, and held it as a custodian, and not as

owner, that he was the disciple of the said Usman and the present head of the community and claimed to hold the premises as custodian on their behalf.

Held, that the possession of property by Usman, for a very long time, being admitted, the onus lay on the defendant to prove that the property was not Usman's private property, but that it was held by him on behalf of the community of eunuchs.

Held further, that the eunuchs being Mahomedans, the defendant must establish that the property was 'wakf.' He could do so by proving either that the property was actually dedicated by any former owner as 'wakf' for the use of eunuchs or by evidence of user for the purpose of the dedication.

Lucas & Crouch J. C.

Badalshah Sultanshah v. Ahmed 1 Sind L. R. 107.

———*Shias—Succession—Held* that according to the Muhammadan law applicable to the Shia sect the maternal uncle of a deceased person excludes from inheritance the grandson of his great grandfather's brother.

Bannerji J.

Nijabat Ali v. Wazir Ali, A. W. N., 1908, 149.

———*Creation of vested remainder by a Mahomedan—Spes successionis—Creation of life-interest amongst Shias : allowed.*—It is possible for a Mahomedan to create a definite interest like what would be called in English law a vested remainder, and such a remainder, though liable to be displaced, is not a mere expectancy in succession by survivorship or other merely contingent or possible right or interest, but an interest that could be attached and sold.

Umes Ohunder Sircar v. Mussummat Zahoor Fatima L. R. 17 I. A. 201 followed.

Amongst Shias the creation of a life-interest is allowed, and it appears according to Shia authorities that during the period of the life-interest the deferred interest can be dealt with by way of sale, gift, and otherwise, provided that there is no interference with the particular estate, and it would seem to follow that the purchaser or donee could deal with the interest so acquired by him.

Jenkins C. J. & Heaton J.

Banoo Begum v. Mir Abed Ali 32 Bom. 172.

Mamlatdar's Court Act (Bombay Act III of 1876 and II of 1906).—*General Clauses Act (Bombay Act 1 of 1904), sec. 7—Bombay Act II of 1906, sec. 23—Proceedings commenced under the old Act—Right of appeal given by the new act can be no avail—Right of appeal is not a matter of procedure.* A suit under the Mamlatdar's Courts Act 1876, was commenced on the 24th February 1906. On the 29th October

1906, the new Mamlatdar's Courts Act 1906 came into operation, which repealed the former Act. On the 26th January 1907, the Mamlatdar dismissed the suit. The plaintiff presented on the 12th March 1907, a petition for revision to the Collector. It was under sec. 23 of the new Act. The Collector held on the 6th April 1907, that he had no jurisdiction to entertain the application.

Held (1) that the repealing Act could not give the right of revision in respect of proceedings commenced under the Act of 1876.

[2] that on the words of the General Clauses Act, 1904, (sec. 7), it would be wrong to hold that the Collector had jurisdiction, because so to hold would be to affect a legal proceeding in respect of a right which had accrued under the old Act.

To disturb an existing right of appeal is not a mere alteration of procedure. *Colonial v. Irving* (1905) A. C. 369 followed. *Gulam v. Babu and Vajechand v. Nandram*, 9 Bom. L. R. 557 not followed

Jenkins C. J. & Batchelor J.

Nana v. Shetu, 10 Bom. L. R. 527.

Marriage, Nullity of—Deceased wife's sister—Illegitimate child—Custody of the child—Maintenance. Where a decree for nullity of marriage had been made on the ground that the petitioner was the sister of the deceased wife of the respondent; *Held*, that the child was the illegitimate child of the petitioner and that she was entitled, unless a strong case was made out to the contrary, to the custody of the child. Maintenance for a child may be rightly and properly spent for the purpose of maintaining a joint home for the infant and his or her parent, and an account of the amount allowed for maintenance will not be ordered so long as the infant is properly maintained.

Fletcher J.

Bomwetsch v. Bomwetsch, 35 Cal. 381

Merger—Under-proprietor acquiring superior proprietary rights.—Where an under-proprietor acquired the superior-proprietary rights by inheritance, *held*, that the under-proprietary tenure ceased to exist from that date.

Evans J. O.

Razawond Singh v. Jagole 11 O. C., 183.

Minor—Removal of certificated guardian, effect on attainment of majority by—Suit instituted without next friend, effect of—Irregularity—Civil Procedure Code, Ss. 440 and 578.—*Held* that, where a guardian has been duly appointed, the ward will not attain his majority till he attains the age of 21 years, even though the guardian be removed be.

fore the ward attains that age.

Held, that a suit should not be dismissed by reason of the fact that the plaintiff was presented by a person who was a minor at the time but the proper course is to give an opportunity for steps being taken to have a next friend of the plaintiff brought upon the record and to prosecute the case if he so desires.

Chamier & Griffin J. C.

Abdul Karim v. Muhammad Ahmad 11 O. C. 159.

Mortgage—*Mortgagee accepting deed of further charge from some of the mortgagors, effect on integrity of original mortgage.*—*Held*, that the integrity of the original mortgage was not destroyed by the mortgagee's acceptance of a deed of further charge executed by some only of the original mortgagors secured of their own share of the mortgaged property.

Greffin & J. C.

Thakur Singh other v. Jangi Singh II O. C. 73.

Mortgage—Redemption—*When the right to redeem accrues.* A mortgage was executed in 1828 and was made redeemable at the end of any native year from that date. The present suit for redemption was brought in 1902.

Held that the suit was barred.

Sankaran Nair J.

Vishvendra Thirthaswami v. Vishnumurti Bhatt and others. 18

M. L. J. 235.

Oudh Land Revenue Act (III of 1901) s. 111, Cl. (b). *Suit to establish right to share claimed in a partition case in a revenue court, after expiry of period fixed by revenue Court to establish such right.*—In the partition proceedings pending between two parties in the Revenue Court, the plaintiff laid claim to the share recorded in the name of the defendant in the revenue papers. By an order dated 2nd June, 1905, the plaintiffs were directed under the provisions of section 111 (b) of the Land Revenue Act (III of 1901) to file a suit within three months to establish their title to the share they claimed. They filed their suit on 12th April, 1906.

Held, that the suit, having been instituted after the expiry of the period of three months from the order of the Revenue Court, could not be entertained.

Chamier & Griffin J.

Narendra Bahadur Singh v. Moti Lal Singh, 11, O. C. 114.

Partition.—*Suit for partial partition of common land (Shamlat not maintainable—Co-sharer by purchaser.* *Held* that the principles that apply to the partition of joint property apply also to the partition of Sham-

lat, therefore a co-sharer cannot maintain a suit for partition of a portion only of the Shamlat if objected to by any of the other co-sharers.

Clarke C. J. & Reid J.

Sheonath v. Parmanand, 3 P. W. R. 263.

Pledge—Sale for debt—Subsequent redemption—Revival of debt. Where the debtor authorised his creditor to pledge his jewels and the creditor sold them and discharged the debt due to him with the proceeds of the jewels but subsequently redeemed them.

Held that his subsequent redemption could not revive the debt which had once been discharged.

Wallis & Munro J. J.

Nilkantum v. Chockalingam, 3 M. L. T. 293.

Possession.—Oral agreement with the owner—Finding of possession of part of a village—Whether possession of suit lands in the village.

Held, that possession of part of a village is not sufficient to justify a finding that the plaintiff is in possession of the land in suit though it is part of the village.

Boddam & Munro J. J.

Chithambaram v. Raman Chetty, 3 M. L. T. 3131.

Practice—Judgment based on an erroneous assumption Court's power to re-open it—Government grant of revenue of a village—Grantee can bring under cultivation uncultivated or unassessed land and profit by it. Where a judgment is based upon an assumption or hypothesis which is ascertained to be erroneous the Court can disregard it and re open that portion of the case affected by the error.

Where the Government grants the revenue of a village considered as a suit of assessment, and in the course of time the grantee is able to bring under cultivation land which was previously uncultivated or even unassessed it is open to him under the grant to do so and to profit by the new cultivation.

Lawrence Jenkins C. J. & Batchelor J.

Balwant v. Secretary of State, 10 Bom. L. R. 531.

Pre-emption—Plea that a sale was in reality a gift—Estoppel, belief in the representation necessary for. Where it was contended that the parties to a sale-deed were estopped from proving as against the person suing for pre-emption, that the transaction was in reality different from what it appeared to be, *held*, that before the plea of estoppel could be maintained it must be proved that the plaintiff believed the representation and brought his suit in consequence of that belief.

Chamior & Evan's J. C.

Nawab Begam v. Hamid Ali, 11 O. C., 176.

—Gazetted holiday, period fixed for payment expiring on—

Delay due to official oversight—Question of compliance with the decree, right of appeal—Power of Court to extend period of payment—Appeal treated as revision—Civil Procedure Code, Ss. 214, 244 and 622. **Held, Held,** that where the last day of the period fixed for payment into Court of the pre-emptive price expired on a Gazetted holiday the payment could be made when the Court opened.

Held further, that the rights of a decree-holder are not affected by a delay arising from official oversight.

Held also, that a question of payment or non-payment of a pre-emptive price in compliance with a decree in the terms of S. 214 Civil Procedure Code, is not a question of execution open to appeal under S. 244 of the Code.

Held, also, that a High Court in revision has the power vested in a Court of appeal, to fix a fresh date for the deposit of the purchase-money.

The Court, in this case, treated the appeal before it as an application for revision, set aside the decree of the District Judge as without jurisdiction and substituted a similar order in the exercise of its revisional powers.

Griffin J. C.

Ganga Dhar v. Anrudh Singh.

Priority—Partition—Owely—Allotment on partition—Mortgage—Charge for owely. Where co-sharers have been awarded certain sums of money as owely on a partition decree, they are entitled to priority over the mortgagees of a portion of the property partitioned.

Maclean O. J. Stephen & Woodroffe. J. J.

Shahbazada Mahomed Kazim Shah v. R. S. Hills, 35 Calc. 388

Registration Act S. 17—application of—The provisions of section 17 of the Registration Act do not apply to proper judicial proceedings whether consisting of the pleadings filed by the parties or of orders made by Court when registration would be otherwise necessary.

Mitra and Casperes J. J.

Govinda Chandra Paul v. Dwarkanath Paul. Cal. L. J. 492.

Revenue Sale Law—(Act XI of 1859), sec. 54 Purchaser of Share—Right to recover from person who has acquired title by adverse possession previous to default.—Whether adverse possession is completed before or after the date of default, a purchaser at a revenue sale of a share of an estate in respect of which a separate account has been opened in the Collectorate becomes entitled to possession of the share.

If the adverse possession was completed before default, default must be treated as the default of the person who has acquired title by adverse possession and the sale must be held to pass his interest.

Stephen & Doss J. J.

Kumar Kalanand Singh v. Sayad Sarafat Husain 12 C. W. N. 528.

THE LAWYER.

1st AUGUST 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL)

Abandonment—Absolute—Absolute possession of maliki and shamilat land—Right of defendant to complain—compensation. Remaining out of possession for very many years, and not evincing any concern in the land or receiving any of the profits do not *per se* suffice to prove abandonment, especially where (as here) the person who has all along been in possession is a very near agnatic relation and at the out-set took possession on behalf of plaintiffs' fathers then minors.

Rattigan J.

Hakim v. Hashin, 3 P. W. R. 330.

Administration bond.—Sureties—liability—Letters of administration, obtained by fraud—Effect—Misappropriation by grantee—Sureties not parties to fraud—Revocation of grant. Although letters of administration have been obtained by fraud, so long as the grant remains unrevoked, the grantee to all intents and purposes remains the administrator, and he alone represents the estate and his receipts are valid discharges for all monies received by him as administrator.

For his acts and defaults as administrator, his sureties, though themselves not parties to the fraud or cognisant of it, are liable. (P. C)

Debendra Nath v. Adm. General of Bengal, 12 C. W. N. 802 =
10 Bom. L. R.

Administrator.—Suit by—"Letters" must issue before he can sue—Code of Civil Procedure Act, sec. 50 and illustration (b) thereto—Non-suit. No suit is maintainable when instituted by a person in his capacity as the administrator of the estate of a deceased person unless and until Letters of Administration are issued to him to entitle him so to sue in such representative capacity.

Fletcher J.

The Adm. Gene. of Bengal v. Lalit Mohan Roy, 12. C. W. N., 738.

Award—*Disagreement of both parties not sufficient to render it ineffectual.* Held, that the mere fact that both parties to an award expressed their dissatisfaction at the time the award was delivered, is not sufficient to render it ineffectual. Unless both parties agree to repudiate the same, it has the force of a binding contract or final judgment. I. L. R. 19 Mad 291, followed

Pokerdas Bolumal v. Dewan Harumal. 1 Sind L. R. 236

Bengal Municipal Act (III B. C. of 1884), Secs. 85 (a) (d), 116—Salary earned but not spent within Municipality, if may be assessed—Civil Courts Jurisdiction to review assessment. “*Circumstances and property within the Municipality.*”—The Defendant was assessed by the Plaintiff Municipality with taxes under sec. 85 (a) of the Bengal Municipal act on the basis of the salary earned by him within the Municipality, but he objected that he spent a portion of it outside the jurisdiction of the Municipality and therefore no assessment could be made on the portion.

The Plaintiff Municipality having sued the Defendant for the tax as assessed.

Held—That the Defendant was not precluded from raising his objection to the assessment in the Civil Court.

That the Defendant had been correctly assessed “according to his circumstances and property within the Municipality, within sec. 85 (a) of the Bengal Municipal Act Jurisdiction of Civil Courts to review the decision of quasi-judicial bodies like a Municipality in regard to assessment of taxes discussed with reference to authorities.

Chairman of Firidhi Municipality v. Suresh Chandra, 12 C.W.N. 709.
= 7 C. L. J.

Bengal Tenancy Act (VIII of 1885) Sec. 165—Landlord parting with his interest after the accrual of rent, if has a first charge—Decree, character of—Putni Regulation (VIII of 1819), sec. 13 cl. (4)—Durputnidar's lien, if superior to landlord's charge—There is nothing in the law which disentitles a landlord to a first charge, because after the accrual of the rents he sued for, he parted with his interest in the Zemindari. The character of the decree a suitor obtains depends on the nature of the claim and of his right to the relief sought for and is not altered by any change in his position which may have taken place subsequent to the accrual of his right to sue. A durputnidar in possession of putni under section 13 cl. (4) of the Putni Regulation has only a lien, not a first charge on the Patni.

A landlord, who, though after the accrual of the rent sued for 1 parted

with his interest in the Zemindari, has a priority over a person having a lien under section 13, cl. (4) of the Putni Regulation and can under section 165 of the Bengal Tenancy Act sell it free of all encumbrances.

Rampini v. Sharfuddin J J.

Maharaj Bahadur Singh v. A. H. Forbes. VII. Cal. L. J. 652.

Birt—Right to realise Birt is immoveable property—Mortgage of Birt—Mortgagee's right in Birt—Suit for redemption of mortgage and for possession of Birt—Extinguishment of right to realise Birt—Indian Limitation Act XV of 1877, S. 28 and articles 142 and 144 of its second schedule—C. P. Code, Ss. 32 and 42. Held that, the right of a Hindu to realise Birt as well as the interest of mortgagee of such a right is in the nature of immoveable property, and that a suit for redemption of a mortgage thereof is governed by article 148 of 2nd schedule to the Indian Limitation Act XV of 1877, and the period of Limitation for a claim to recover its possession is 12 years under either article 142 or 144 as the case may be; and the section 28 of the Act applies where the suits are not brought within prescribed limitation.

Reid J.

Mohanlal v. Janki. 3 P. W. R. 328.

Bombay District Municipal Act (3 of 1901), Section 54—Imperative duty of the Corporation—Dustbins—Nuisance—Powers of Court to interfere with acts of a Corporation.—Held, (1) Apart from the terms of the statute which constitutes it, a corporation has no more authority, to infringe a private right, than an ordinary citizen.

(2) A corporation can do an act which constitutes a nuisance, if the power to do the act is expressly set forth in the statute or is necessarily deducible therefrom.

(3) The statute may, (a) impose an obligation on the Corporation, or (b) merely give permission to the Corporation, to do the act, which causes the nuisance. In the former case the Court cannot interfere with its operation, in the latter case the Court can only interfere with the discretion of the Corporation, if it has not been exercised *bona fide* and with due care and caution.

(4) In construing a statute the Courts will put a wider and more liberal construction on the powers vested, for the benefit of the public, in a body such as the Municipal Corporation.

(5) Section 54 of Bombay Act III of 1901 imposes an imperative duty on the Municipality to make reasonable provision for cleaning public streets.

(6) Having regard to the circumstances obtaining in Karachi, the provision made by the Municipality of keeping dustbins in some specified places in the streets was an act necessary for keeping the streets clean, and where the plaintiff failed to prove that the Municipality had acted without due care and caution in selecting either the dustbin or the place of keeping, the plaintiff could claim no relief even though the receptacle having been kept in the vicinity of his house was a nuisance to him.

Hanraj Hirji v. The Karachi Municipality 1 Sind L. R. 228.

The Bengal N. W. P. and Assam Civil Courts (Act XII of 1887) Secs. 9, 22 (2).—*Transfer of Appeal to Additional District Judge*—Under sections 9 and 22 (2) of Act XII of 1877, the District Judge has jurisdiction to transfer to the Additional District Judge any suit or appeal transferred by him originally to a Subordinate judge and then withdrawn. *Bidya Moyee v. Surja Kanta* 32 Cal 895 distinguished.

Ramjini of Woodroffe J. J.

Pandit Kakal Chandra v. Secretary of State, 8 C. L. J. 34.

Central Provinces Tenancy Act (XI of 1898), Ss. 45, 46, 47 and 95—Act IX of 1883 as amended by Act XVII of 1889, s. 43—Ejectment, suit for—Jurisdiction of Civil Court—Limited in extent—Limitation.—Under section 46 of the Central Provinces Tenancy Act (XI of 1898), the transfer of an occupancy holding, either in whole or in part, is voidable at the instance of the landlord, who, in order to recover possession of the holding on the ground of such a transfer, must follow the procedure as laid down in s. 47 of the Act. *Bhandi Singh v. Ramadhin Rai*, 2 C. L. J. 359, referred to. Held, further, that when the transfer was made before Act XI of 1898 came into force, under s. 43 of Act IX of 1883, as amended by Act XVII of 1889, the Civil Court had jurisdiction to entertain such a suit for ejectment, and that its jurisdiction was not taken away by the passing of the new Act. Under S. 43 of the Central Provinces Tenancy Act (IX of 1883, as amended by Act XVII of 1889), a transfer of a portion only of an occupancy holding is not void, and it does not entitle the landlord to exercise his right of re-entry, either as regards the entire holding or as regards the portion transferred. A person can plead tenancy and in the alternative, possession of a limited interest; such a possession may be just as much adverse for the purpose of barring a suit for the determination of that limited interest.

Stephen & Mukerji J. J.

Icharan Singh v. Nilmoney Balidar, I. L. R. 35 Cal. 470

Chota Nagpur Encumbered Estate Act (VI of 1873, B. C.) sec. 3 (3) (c)—*Contract by person subsequently declared to be owner of Encumbered Estate—Subsequent withdrawal of encumbrance—Revival of validity—Bearing of pending suits—‘Debts and liabilities’,—meaning of.* A contract, entered into by a person who is subsequently declared to be the heir of deceased person whose estate had been at the time of the contract taken charge of under the Encumbered Estates Act, is void as such person had no competency to contract.

Even though at the time of the execution of the contract he had not been declared to be the heir, yet as soon as he was found to be the heir, he became heir from the time of the devolution of the estate, which was admittedly prior to the execution of the contract and such contract became void for want of capacity to contract. On the release of the estate from the operation of the acts, the validity of the contract could not be received as it was absolutely void. While the suit was pending the estate was taken charge of for the second time and the suit therefore became barred.

It does not matter, if the particular liability has not been mentioned in the application under the Act, as debts and liabilities in sec. 3 mean ‘all debts and liabilities’ of the holder of the estate taken charge of other than debts or liabilities incurred to Government.

Kameshar v. Bikhau, 20 Cal. 609, and *Jagadis v. Satrugan*, 33 Cal. 1065 followed. *Rampini & Sharfuddin J. J.*

Raja Satrugan v. Raja Jagadish, 7 C. L. J. 578.

Chowkidari Chakran Land—Putni, construction—Zemindari—Putnidar—Lands held by Chowkidar, revert to whom, on redemption. In the absence of a contract to the contrary, the zemindar who appoints and dismisses chowkidars and in enjoyment of their services since the creation of the putni lease is entitled to the lands held by the Chowkidars after the redemption of such lands by the Government.

Nitya v. Maharajah Dhiraj Bejoy Chand, 7 C. L. J. 593.

Civil Procedure Code Sec. 13, Expl II—Resjudicata—Property not included in the former suit—Right as heir decided in the former suit with respect to other property—The decision does not bar the second suit. K. brought a suit against A. and others to recover some property as heir of one S., praying for a partition of the properties specified in the plaint and for allotment to him of S's share therein. A denied K's heirship and asserted himself to be heir of S. It was decided that A, was the heir of S. and the suit was dismissed.

A. then brought another suit against K. to establish his right as S.'s heir to property not included in the plaint in the first suit. The lower appellate Court negatived the claim upon the ground that as A. failed to make the omission by K. to include the property in dispute in the previous suit for partition a ground of defence, A.'s right to the property was in the second suit barred under Explanation II to section 12 of the Code of Civil Procedure.

On appeal to the High Court.

Held, that A.'s right to maintain the suit was not barred by *res judicata*.

Explanation II to section 13 of the Civil Procedure Code must be read in conjunction with and as part and parcel of the leading provisions of the section itself. According to those provisions, several conditions are necessary to constitute a matter *res judicata*. Two of these conditions are: (1) that the matter must have been in the former suit directly and substantially in issue; and (2) that it must have been heard and finally decided in that suit.

The explanation does no more than lay down that if a matter, which might and ought to have been made a ground of defence in the former suit, is not made such a ground, it shall be dealt with as falling within the first of the above-mentioned conditions. That is, the omission shall have the same effect given to it as it would have had if it had been made a ground of defence. But to constitute *res judicata*, a second condition is necessary—it must have been finally decided and if the former suit went off on a preliminary ground not calling for adjudication on other grounds of defences whether raised or not, those grounds remain undecided.

The same effect must be given to a matter which might and ought to have been but has not been made a ground of defence in the former suit, as must be given to it if it had been made a ground of defence in the former suit.

Chandavarkar & Knight J. J.

Abdullakhan v. Khanmia 32 Bom. 315

—Sec. 13—*Res-judicata*—Point decided by lower Court not decided by appellate Court The mere filing of an appeal from a decision does not vacate or annul that decision, though in India, under explanation IV to section 13 Code of Civil Procedure, it prevents the decision from operating as *res judicata* while the appeal is actually pending. If the appeal is dismissed on the sole ground that it is time-barred, the appel-

lant is in no better position than if he had been heard on the merits and had failed thereon, and the parties are bound by the decision of the lower Court on each point actually decided by it. Such a case is distinguishable from one in which an appeal impeaching the decision of the Lower Court on more than one point is disposed of so as to leave some points or points undecided, in the latter class of case it is settled law that the decision of the lower Court on a point left undecided by the Appellate Court does not constitute *res judicata*.

Ramchandra v. Narain, IV N. L. R. 18.

————Section 13.—*Res-judicata*—*Question of title decided in former suit by revenue court*—*Former suit instituted wrongly in revenue Court*—*Appeal to the Civil Court*—*suit to be deemed as instituted in right Court*. In a suit for an annuity for certain years, the defendants denied the title of the plaintiffs. In a previous suit in the revenue Court between the same parties for arrears of revenue of certain other years it was decided, upon the admission of the defendant, that he was liable.

Held, that the decision of the revenue Court operated as *res judicata* upon the question of title and the defendant was estopped from re-opening the question in the present suit and the plaintiffs were entitled to receive the amount of the annuity. *Stanley C. J. & Karamat Husain J.*

Dwarkadas v. Abhey Singh, 5 A. L. J, 407.

————S. 17 *Place of Payment*—*Debtor to follow his creditor*—*Principal and Agent*—*Held* that, where no place of payment is specified either expressly or by implication, the debtor must follow his creditor and pay where his creditor is.

Held further, that the same rule applies to the case of an agent who has to pay money to his principal. *Chamier J. C.*

Suraj Kumar v. GokulChand 11 O. C. 191.

————17—*Venue of suit*—If a Merchant at L remitted a certain sum of money to P in C for supplying certain goods to G at L where also the balance of the price was to be paid by a bill drawn at L

Held, that in case of breach of the above contract, G can sue P. at L for recovering the money advanced and for damages, under clause (ii) of explanation III to section 17 of the C. P. Code, in as much as L is the place where the performance of the contract is to be completed by paying the balance, and also under clause (ii) of the said explanation because the amount

advanced plus damages would be impliedly though not expressly payable at L.
Clarke, C. J.

Premji Khetsay v. Ghulam Sarwarkhan, 3 P. W. R. 309.

———Ss 23, 28—*Misjoinder of defendants—meaning of—in respect of the same matter.* A suit by the assignee of a mortgage against the mortgagor and his assignor (the mortgagee) for a mortgage decree, in the first instance against the mortgagor for the whole amount mentioned in the mortgage, and, in the alternative, for a money decree against the assignor (mortgagee) in respect of the amount that may be proved to have been received by him subsequent to the assignment, and mortgage decree in respect of the balance, is not bad for misjoinder of defendants.

Per Wallis J.—The words “in respect of the same matter” in sec. 23 indicate that claims to relief might be joined in one suit against defendants whether they constituted separate causes of action or not, so long as they are in respect of the same matter. The scope of s. 28 is wider than that of English rule 4, O, XVI, and English decisions under rule 4 are not applicable to sec. 28, C. P. Code.

Aiya thurai Ravuthan v. San Muhammad Meera Ranthan, 18
M. L. J. 238.

———S 28—“*Same Matter*”—*Joinder of defendants*—Plaintiff a minor, sued on attaining majority, his guardian, the 2nd defendant, impleading defendants 1 & 2 to 8 as persons in possession of property wrongfully sold to some of them by the guardian, the 2nd defendant.

Held, that the suit was rightly framed and that there was no misjoinder.

Benson & Miller J. J.

Dorasawmy Pillay v. Angammal 18 M. L. J. 265.

———S 32—*Parties—Limitation—Adding party to suit after period of limitation—Limitation Act s. 22.* Held. (by the Full Bench), that a Court, acting under the second paragraph of section 32 of the Code of Civil Procedure, is bound by the provisions of s. 22 of the Limitation Act. *Grish Chunder Sasmal v. Dwarka Nath Dinda*, 24 Cal. 640 and *Fakera Pasban v. Bibi Azimunnissa* 27 Cal. 540 over-ruled. *Imam Ali v. Baij Nath Ram Sahu*, 10 C. W. N. 551 approved. *Oriental Bank Corporation v. Charriol*, 12 Cal., 642, explained (F. B).

Ram Kinkar Biswas v. Akbil Chandra Chaudhuri, 35 Cal. 315.

———Sec. 51.—*Signature of plaint.* A plaint signed by the Collector and the pleader, who is not the Government pleader but who generally acts for Government, but verified by the Collector and the Govern-

ment pleader, is properly signed and verified on behalf of the Secretary of State, even though it was signed and presented at a sub division, where the Government pleader does not ordinarily practice.

Per Rampini J.—In the absence of any evidence as to the commencement of a tenancy or its character, it is to be presumed that the tenancy, expiring with the last day of the Bengali month, of each year, a notice to quit, therefore served on the 8th August 1899, requiring the tenant to quit on the last day of Chaitra 1306, (12th April 1900) was quite valid.

Rampini & Woodroffe J. J.

Pandit Rakal Chandra Twari v The Secretary of State, 7 C. L.J. 84.

———**Secs. 102, 103, 157 and 158—Appearance by Pleader for adjournment—Effect of**—On the day of hearing of the case the plaintiffs' pleader applied for an adjournment on the ground that his client and witnesses were absent owing to the fever epidemic then prevailing in the town; the Judge refused the adjournment but gave time up to 2 o'clock to the plaintiffs' pleader to consider what he should do; on the case being called up again at 2 o'clock, the plaintiffs' pleader left the Court without saying anything further and the Judge dismissed the suit. *Held*, that the order dismissing the suit was an order under secs. 102 and 157 and not under section 158, Civil Procedure Code, and the plaintiffs' remedy was by an application under section 103, Civil Procedure Code.

Allahdino v. Nawalmal 1 Sind L. R. 224.

———**Sec. 199—Judgment when the Judge ceased to exercise jurisdiction in the place, if valid.** A judge who hears the evidence in the case is entitled under section 199 of the Code of Civil Procedure to write his judgment and send it to his successor for delivery, although the judgment was written by him after he had left the judicial post which he was occupying where he heard the case

Full Bench.

Satyendra Nath Roy Chowdhry v. Kastura Kumari Ghatwalin, VII, Cal., L. J., 666.

———**Sec. 244—Application of.** Section 244 of the Civil Procedure Code has no application to a case where the judgment debtor tries to set aside the effect of, of the decree itself. In the case of a mortgage, decree itself directs the sale of the property and if objection is taken that the property cannot be sold because it belonged not to the judgment-debtor but to a party who is a stranger to the suit, propriety of the decree is called in question or question of this description must be tried in a regular suit

and not in the execution proceedings which are based on the assumption that the decree is a good and valid decree.

Mookerjee J.

Shib Lakshman v. Srimati Taranbini Dasi, 8 C. L. J. 20.

—————**Secs. 274 and 311—Sale—Proclamation—Service, if should be in every part of the property—Value, statement of, if material—“ Properly.”** The statement in the sale-proclamation of a value which proves to be inadequate is an irregularity but not a material irregularity. Such statements are made without much consideration and it is well-known that purchasers do not take serious notice of any statement in the sale proclamation as to the value of the property to be sold.

Sec. 274 of the Civil Procedure Code does not require that the sale proclamation should be served in each of the villages comprised in the property to be sold. “The word “property” in that section evidently refers to each “lot” to be sold separately from the rest.

Though it is a sound rule to follow, viz., to serve a separate proclamation in each of the villages embraced in the same process when they are at such a distant from one another that there is no moral certainty of communication to persons on or interested in the one of what is publicly done in the other, the fact that the processes were not served in each does not necessarily constitute an infringement of the provisions of sec. 274 of the Civil Procedure Code.

Casperz J.

Moulvi Abdul Kashim x. Benoda Lal Dhone, 12 C. W. N. 757.

—————**Sec. 310 A.—Decree attached by two persons—Sale by one attaching one creditor—Deposit to set aside sale—Title to deposit.** Defendant No. 1 obtained two decrees against deft. No. 2, plaintiffs also obtained a decree against defendant No. 2 who had obtained a decree against a third person, deft. No. 1 attached that decree and he is instituted for defendant No. 2 on the 16th July 1904, plaintiffs also attached that decree and were substituted in place of defendant No. 2 on the 18th November 1904. Then at the instance of deft. No. 1 (in execution of the attached decree) properties were sold and the sale was set aside by a deposit under section 310A, C. P. C.

Held—That upon the terms of the sec. 310A, C. P. C., both plaintiffs and Defendant No. 1 were entitled to the money deposited.

Madan C. J. & Doss J.

Upendra Nath o. Hari Dass, 12 C. W. N. 800.

—————**Ss. 310 A, 244 and 588—Question relating to the execution, discharge or satisfaction of a decree—Appeal—Auction purchaser**

representative of judgment debtor, not of decree-holder.—A purchaser at an auction sale in execution of a decree is the representative of the judgment-debtor, not of the decree-holder. *Manicka Odayan v. Rajagopala Pillai* 30 Mad., 507 dissented from.

Where therefore a judgment debtor's application under section 310 A of the Code of Civil Procedure had been allowed, it was *held* that no appeal by the auction purchaser would lie, inasmuch as no appeal was given by section 588, nor did the case fall within the purview of section 244 of the Code. *Bashir-ud din v. Jhori Singh* (19 All. 140) followed. *Imtiaz Begam v. Dhuman Begam* (29 All. 275) dissented from.

Aikman & Griffin J. J.

Anandi Kunwari v. Ajudhia Nath, A. W. N., 1908, 157.

—————S. 318—*Limitation Act, art 178—Execution of decree—Limitation—Terminus a quo.*—Although the grant of certificate is a necessary preliminary to an application under section 318 of the Code of Civil Procedure, such application will be barred under article 178 of the second schedule to the Indian Limitation Act, if not made within three years of the date of the certificate, that is to say, the date of the confirmation of sale. *Basapa v. Marya Duming Zuran* 17 Bom., 433) and *Kashinath Trimbak Joshi v. Duming Zuran* (17 Bom., 228) dissented from.

Aikman & Griffin J. J.

Ranjit Sing v. Baldeo Singh, A. W. N. 1908, 162.

—————Ss. 440, 443—*Representative of minor plaintiff—Leave of Court—Certificated guardian not appointed—Compromise—Court to decide if for benefit of minors.* Where the mother of a minor is allowed by the Court to act for her son, it is a fair inference that she was appointed guardian by the Court, even though there is no formal order in the record, so appointing her.

Where the Court acts in contravention of S. 443, Civil Procedure Code and overlooking the claims of the certificated guardian appoints somebody else, guardian of the minor, it is a mere irregularity. *Dammar Singh v. Pirbhu Sing*, 29 All. 290. approved and followed.

Even though there be no order which states in so many terms that the Court has considered the compromise, and held it to be for the benefit of the minors, it must be assumed, in the absence of evidence to the contrary, that the Court did its duty in the matter.

Woodroffe & Coxe J. J.

Midnapore Zamindari Co, Ltd. v. Gobinda Mahto, 8 C. L. J. 31.

———**S. 503—Receiver—Appointment of receiver to realize amounts of decrees under attachment.** Where decrees held by the judgment-debtor against third parties were attached held that section 503 of the Code of Civil Procedure gave power to the Court to appoint a receiver to realize the amounts of the attached decrees where it appeared that by so doing the interests of both decree-holder and judgment-debtor would be better protected.

Aikman & Karamat Hnsain J. J.

Partap Singh v. The Delhi and London Bank, Ltd., A. W. N., 1908, 164.

———**S. 508—Arbitration—order of reference not fixing a period within which the award is to be made—Appeal.**) Where an order of reference to arbitration made by a Court omits to fix a date for the delivery of the award, such omission is not a mere irregularity but is a defect fatal to the order, and to all subsequent proceedings founded thereon.

Stanley C. J. & Burkitt. J.

Lachman Das v. Akharbux 30 All, 169.

———**S. 510—Arbitration—Refusal of umpire to act—Power of appoint a fresh umpire.)** Held that section 510 of the Code of Civil Procedure does not apply only to cases where a person has signified his assent to take upon himself the duties of an arbitrator or becomes incapable to act. *Bepia Behari Chowdhry v. Annyda Prasad Mullick 18 Calc. 324* dissented from.

Griffin J. C

Fayaz-ud-din v. Amin-ud-din, A. W. N., 1907, 159.

———**S. 521.—Arbitration—Misconduct of arbitrator—Hearing of case ex parte.** The arbitrators are guilty of misconduct when they hear the case in the absence of one of the parties and decide it on evidence produced by the other party, where there is sufficient cause shown for the absence.

Robertson & Shahdin J. J.

Sobharam v. Ramdas, 9 Pun. L. R. 520.

———**S. 522—Award set aside—Appeal—Appellate Court's power to go into the question of the propriety of the order of the first Court setting aside the award.** Where a Court set aside an award and gives a decree on the merits and an appeal is preferred therefrom, the Appellate Court has jurisdiction to enquire into and decide as to the propriety or otherwise of the decision of the first Court setting aside an award.

Boddam & Sankaran Iyer J. J.

K. Achutayya v. N. S. Thimmaya, 18 Mad. L. J. 228.

———**Ss. 562—Remand—Appeal from order of remand after**

decision of the suit in accordance therewith.—*Held* that no appeal will lie from an order of remand passed under section 562 of the Code of Civil Procedure, if such appeal is filed after the suit has been decided in compliance with the order of remand and no appeal is preferred from the decree in the suit. *Salig Ram v. Brij Bilas*, All, 659, and *Madhu Sudan Sen v. Kamini Kant Sen*, 32 Calc., 1023, followed.

Aikman & K. Husain J. J.

Gulzarimal v. Kabir-un nissa 30 All. 191

———*Ss. 562, 588—Appeal—Extent of High Court's power to interfere.* *Held*, that, as soon as it is found that the remand order under S. 562 of C. P. Code, appealed against is not involved by the terms of the section, in as much as the case has not been disposed of by the Court of 1st instance upon a preliminary point, the High Court cannot enter upon, or in any way deal with, the spurious preliminary point, in order to determine whether the lower Appellate Court has wrongly or rightly decided it in making the remand order,

Reid J.

Imam Bibi v. Gulam Hussain, 3 Pun. W. R. 312.

———*S. 588, cl. 18.—Order rejecting an application for substitution—Appeal.* *Held* that an order rejecting an application made by persons claiming to be the legal representatives of a deceased appellant is an order within the meaning of S. 588, clause 18 of the Code of Civil Procedure, and it is not necessary that the dispute referred to in S. 367 of Civil Procedure Code, must be one between rival claimants as legal representatives.

Aikman & Griffin J. J.

Hanmant Singh v. Ramgopal Singh, 5 All. L. J. 363.

———*S. 622—Erroneous decision on a question of law—Revision.* The decision of a court that an award was not bad on the ground that the arbitrator had drafted the plaint for one of the parties, the other party not having been aware of the same until after the award, though—perhaps erroneous, is not liable to be set aside in revision under S. 622, C. P. Code.

Sankaran Nair J.

Subramaniya Othuvai v. Munuswami Pillai, 8 Mad. L. J. 249.

———*S. 622—Other remedies available—Interference by the Court in revision.* *Held*, that it is undesirable that the Court should exercise the special powers vested in it by section 622, Civil Procedure Code, in cases where the applicant can obtain relief by the ordinary procedure.

Santidas Dayaldas v. Mangatram Bhojraj 1 Sind L. R. 266

—————**S. 623**—*New and important matter—Decree rendered ineffectual by subsequent decree—Remedy of judgment creditor.* Held that where a decree has been rendered wholly ineffectual by virtue of another decree passed in a subsequent suit, the remedy of the judgment-creditor is by an application for review of the original case, treating the latter decree as a new and important matter. He cannot treat the decree in the original case as having been reversed and the case re opened on account of the subsequent decree.

Satramdas Jeramdas v. Missir Mongalmal Naumal 1 Sind L. R. 227

—————**S. 623**—*Review—Inaccurate expression in judgment—Mistake corrected.* The judgment of the High Court contained the following sentence :—"This under the Mahomedan Law would be what is known as an ariat, and therefore invalid." An application for review was presented contending that an ariat was valid and the expressions in italics were wrong.

Held. that an ariat was valid under the Mahomedan Law, and it was not meant to decide otherwise in the judgment. The expressions "and therefore invalid," were incorrect and were ordered to be expunged.

Per Bannerji J.—Strictly speaking this application for review of judgment is not maintainable under S. 623 of the Code of Civil Procedure as the applicant was not aggrieved by the decree or order passed in the case.

Bannerji & Richards J. J.

Mumtaz-an-Nisa v. Tufail Ahmed, 5 A. L. J. 405.

Construction—Hindu Law Texts—Conflict between Mitakshra and Vyavahara Mayukha—Rule as to harmonising the difference.—It is a well established rule of the Bombay High Court that where the Mitakshara is silent or obscure, the Court must, generally speaking, invoke the aid of the Vyavahara Mayukha to interpret it, and harmonise both the works, so far as that is reasonably possible.

Chandavarkar & Knight J. J.

Bhagwan v. Warubai 32 Bom. 300.

—————**Hindu law—Disqualified heir—Widow of the disqualified heir—Exclusion from inheritance.**—It is a canon of interpretation in Hindu law that a special text forming an exception to a general text should be construed strictly and applied only to the cases falling clearly within it.

Per Ooriam—According to a well-known rule of interpretation in Hindu Law. when there is a collocation of two texts, dealing with the same subject, and in the first of them two words or expression occur, of which

only one is repeated in the second text, the other word or expression must be excluded as not applying to cases falling within that second text.

Chandavarkar & Knight J. J.

Gangu v Chandrabhagabri 32 Bom. 275

Contract—Validity of—Agreement by a Hindu not to marry a second wife during the continuance of the first wife. An agreement by a Hindu bridegroom, not to marry a second wife during the continuance of his marriage with his first wife, is not *prima facie* repugnant to Hindu law or void, either as a restraint on marriage as immoral or opposed to public policy.

Gama v. Lahnoo, 4 N. L. R. 86.

———**Secs. 23, 24.—Illegal Contract—Contract to indemnify surety for his bail—Bond—Whole consideration—Part of one single consideration cannot be separated to validate an agreement** Pending a Criminal charge against L, his pleader stood bail for him, and as an indemnity for the bail look from him a sale deed and a rent-note regarding his house, in the name of the plaintiff. The consideration for the sale-deed was a sum of Rs. 8000, of which Rs. 5000 were the indemnity for the bail bond and the remaining Rs. 3000 represented the advances to be made thereafter by the plaintiff. The plaintiff sued on the rent-note to recover from L the sum of Rs. 2000 as rent.

Held (1) that the contract for indemnifying the pleader for his bail-bond was illegal and this illegality rendered the sale deed void in law. *Heaman v. Jenchver*, (1885) Q. B. D. 561 followed.

Batchelor & Heaton J. J.

Laerman Lal v. Mulshanker, 10 Bom. L. R. 553.

———**Ss. 59 and 60.—Land revenue—Realisation of.** Sections of the Indian Contract Act apply to transactions in relation to realisation of land revenue. *Ganga Bishan Singh v. Mahomed Jan*, 33 Cal., 1198 not followed.

Maclean C. J. & Doss J.

Jotindra Mohan Sen v. Uma Nath Guha, 18 C. L. J. 41.

———**S. 69 and 70—"Person interested in the payment of money"—Volunteer—Civil Procedure Code, section 283.** The plaintiffs, alleging themselves to be the purchasers of the mortgagee's rights in certain land, paid the amount of a decree against the mortgagee in order to save the property from sale. But it had been already found in a suit

under section 283 of the Code of Civil Procedure, that the sale to the plaintiffs was fictitious and inoperative. *Held* that the plaintiffs were not entitled to recover the amount paid as above described from their vendors.

Stanley C. J. & Burkitt J.

Janki Prasad Singh v. Baldeo Prasad, 30 All. 167.

—————**S. 178—Pawnor and pawnee—Pawnor not owner but having a right possession—Suit by owner for declaration of his title**) A person who had obtained possession of certain movable property belonging to a minor in the capacity of a trustee, and who had been allowed to retain possession of such property after the minor came of age, pawned some of it to persons who were found to have acted, negligently perhaps, but honestly and in good faith. *Held* that the pledge was valid, but the owner was entitled to a declaration of his right to redeem the articles so pawned.

Knox & Aikman, J. J.

Sunder Deo v. Bhagwan Das, 30 All. 165.

—————**Sec. 108—Stolen property—Sale in Overt market—Title—Bona fide sale.** The real owner of an animal which had been stolen is entitled to recover from a bona fide purchaser, and the buyer in overt market cannot keep the animal on the ground that he had purchased it bona fide.

Clarke J.

Faiz Ahmad v. The Crown, 9 P. L. R. 425.

—————**Sec. 245.—Liability of retiring partner,** A partner who had retired before a certain transaction with the firm to which he had belonged takes place, cannot be held responsible unless it can be shown that the transaction was with either a previous customer or one who was aware that the retired partner had been a partner. When a person enters into transaction with a firm without even knowing that a certain person who has already retired ever had been a partner, such person is clearly not liable whether he has notice of the retirement or not, unless he has actually held himself out to be a partner, a position which gives rise to a different class of consideration. If a person is a member of a firm, and known to be such, persons dealing with the firm may be influenced by his credit, and unless he takes proper steps to make his retirement clear, he will be held responsible to them who knew of his partnership and might have been influenced by the firm.

But it is definite personal knowledge which is required, not the vague impression in that, because a firm once belonged to a joint Hindu family

all members of that family which may exist, although not personally known to the customer co exist, will for ever be liable unless they take definite steps to disabuse him of his vague impression. It cannot be held as a principal that when a person has dealings with a man who was once a member of a joint family and competent to pledge the resources of that family, such person can hold the whole of the members who once constituted a joint Hindu family responsible unless they have taken the precaution publicly to proclaim their partition. If it be shown that the father of a minor son had notice of a fact, such minor cannot say that he had no notice.

Chatterji & Robertson J. J.

Mian Amarsingh v. Seth Chand Mal, 9 Pan. L. R. 1908.

Copyright—Infringement—Illustrations in catalogue—Portion of catalogue protected—Puffing statements—Injunction—The plaintiff is not prevented from suing to restrain the infringement of copyright in certain illustrations in his catalogue, by the fact that the copyright in some of the other illustrations in the same catalogue is vested in others. *Lamb v. Evans* 1892. 3, Ch 465, followed. It is no defence to an action to prevent infringement of copyright in a book, that the book contains inaccurate statements, where the statements are in the nature of puffing statements, unless a strong case of fraud on the public has been made out. *Fletcher J.*

Lawrence v. Bucnell 35 Cal. 463=12 C. W. N. 753

Costs—High Court Rules and Forms, 1901, Rule 577—Taxing Master's decision on a question of costs—Review by the Chambers Judge—Third Counsel's costs in a defended long cause—Practice as to retaining of Counsel and their costs—costs of a third Counsel engaged to ask for transfer of case from one Judge to another—Practice.) As a general rule the Judge in chambers will not, on a review of taxation, interfere with items of taxation which are entirely within the Taxing Master's discretion or go into details of such discretionary items; but there is nothing to prevent him from doing so if it appears to him that the interests of justice require his interference and it would be his duty in all such cases to review and revise taxation and Judge and decide for himself what would be a just order to make under the circumstances.

Where two Counsel are already briefed in a case, and a third is instructed to make an application to transfer the case from one Judge to another, and the order making the transfer makes no provision as to costs, the costs should on taxation be refused between party and party, though they may be allowed between attorney and client.

A party to a defended long cause is entitled to appear by two Coun-

sel. If both Counsel attend throughout the hearing and the other party is ordered to pay costs of the suit their brief fees and full refreshers would be allowed on taxation against the losing party. If the suit is conducted by one Counsel only throughout, the full refreshers of the conducting Counsel and a nominal refresher of 2 G. M's. of the other Counsel would be properly allowable against the opponent if ordered to pay costs. If the absent Counsel attends for portions of the time the case is at hearing, his refresher, proportionate to the time he attends would also be properly allowable, in addition to the full refresher allowed to the Counsel who attends and conducts the case.

Where a party to a defended long cause engages two Counsel he has a right to the services of at least one of them. He is under no obligation whatever to engage a third Counsel. If both Counsel find that they would owing to other engagements be unable to go in and conduct the case when it is called on, it is obviously the duty of one of them to return the brief.

If three Counsel are engaged *before* the hearing it will be for the Taxing Master to consider the fees and refreshers of which two he will allow between party and party and which Counsel's fees should go between attorney and client. A Solicitor engaging three Counsel is entitled to have his third Counsel's costs taxed between attorney and client if he proves express authority from his client or if he proves that some peculiar contingency arose which made it necessary for him to engage a third Counsel in order to safe-guard his clients' interests. If a third Counsel is added after the hearing of the suit has commenced such addition must be at the cost of the party doing so Davar J.

Banoo Begnm v. Mir Aun Ali 32 Bom. 262.

Custom—Succession—Ancestral property—Forfeiture of, by Government on owner absconding—Reversioner—Right of—Criminal Procedure Code (Act V of 1898) Ss. 87, 88. Held by Clark, C. J. and Chatterji J. (*Johnstone J.* dissentiente) that when ancestral land belonging to a person subject to Customary law is forfeited to Government it does not extinguish the right of his heirs and reversioners to recover the land on his death from any person who may be in possession of it at the instance of Government by sale or otherwise. (F. B.)

Sadhu v. Secretary of State for India, 9 Pun. L. R. 491.

Dekkan Agriculturists Relief Act (XVII of 1879) S. 15 B.—Decree—Instalments—Power to award first instalments. Where a decree allowing instalments has already been obtained, S. 15 B of the Dekkan

Agriculturists Relief Act, 1879, does not permit the executing Court to reconsider the whole matter afresh with a view to the substitution of some new scheme of instalments.

The second clause of S. 15 B of the Dekkan Agriculturists Relief Act, 1879, refers only to those cases where directions for payment have already been given under the first clause. *Batchelor & Heaton J. J.*

Shankar Shamrao v Shankar Agandayya, 10 Bom. L. R. 538.

Evidence—*Khasra Admissibility of Entries in Remarks Column of—Held*, the entries made by the Patwari in the remarks column of the *Khasra* are admissible in evidence. *Chamier C. J.*

Khalil-ur-rahman v. Sripal Singh 11 O. C. 195.

— **Act, s. 115—Estoppel—Occupancy holding, non-transferable—Purchase by Landlord in execution of money-decree, whether subject to previous mortgage.** Where in execution of the money-decree the landlords of a non-transferable occupancy holding purchased the holding after it had been mortgaged by the tenants in favour of third party.

Held—That in a suit by the latter to enforce the mortgage, the landlords were not estopped from setting up the defence that the holding was not transferable without their consent.

That the sale of the holding by the landlords did not amount to a representation that it was transferable with their consent.

That the landlord did not merely purchase the equity of redemption, the English law of mortgage not being applicable to the case.

The law of estoppel in force in this country is contained in sec. 115 of the Evidence Act. *Rampini & Ryves J. J.*

Babi Asmatunnessa v. Harendra Lal, 12 C. W. N. 721.

Execution of Decree,—Sale of ancestral property—Civil Procedure Code, section 320—Rules framed by Local Government—Application under Rule 17 (XIIIA). One of several co-owners of ancestral property which had been sold by the Collector under the Rules framed by the Local Government under section 320 of the Code of Civil Procedure applied under Rule 17 (XII) to have the sale set aside upon the ground of material irregularities in the conduct of the sale causing substantial loss. Another of such co-owners, whilst the first application was pending, applied under Rule 17 (XIIIA) to have the sale set aside, making at the same time the necessary payments into Court required by the rule.

Held that upon the presentation of the latter application under Rule 17 (XIIIA) the Collector was bound to set aside the sale, and was in no way precluded from so doing by the existence of the former application under Rule 17 (XII). *Stanley C. J. Burkitt J.*

Tuli Ram v. Izat Ali, 30 All. 192.

Family Arrangement.—*Consideration—Hindu Law—Agreement amongst co parceners not to partition to what extent binding.* Persons jointly entitled to lands may, as amongst themselves, come to an agreement as to the manner in which they will naturally enjoy the property, and an agreement between the members of a Hindu family not to come to partition may be binding on the immediate parties thereto. *Ram Dho-ni v. Ananil*, L. R. 21 A. 169, (1875) followed. *Shri Mohan v. W. Oel-lac Gregor*, I. L. R. 28 Cal. 769 (1891) distinguished.

A family arrangement may be such as the Court will uphold although there are no rights in dispute, and if sufficient motive for the arrangement is proved, the Court will not consider the quantum of the consideration nicely. *Williams v. Williams*, L. R. Ch. app. Vol. II 294 (1866-7) followed.

Where in return for binding themselves not to sue for partition, the parties obtained a right to take advances from family funds in excess of what might be due to them at the time, and also obtained a right to preempt any share which the other members of the family might wish to well.

Held, that the arrangement was for consideration.

Caspersz & Aikman J. J.

Krishnendra v. Debandra, 12 C. W. N. 793.

Grant—Grant of land in Secunderabad Cantonment—Grant to founders of Parsi Tower of Silence—Documents by Hyderabad State and by Officer Commanding Hyderabad Subsidiary Force controlling Cantonment—Proof of title—Suit—Encroachment—Parsi community—Evidence of conduct of founders subsequent to acquisition of land.—In a suit, in which the parties were the members of the Parsi Community at Secunderabad, the plaintiffs claimed the exclusive right to certain land in the Cantonment, on which stood a Parsi Tower of Silence, as descendants and representatives in title of the original founders, by whom they alleged the Tower had been erected after the land had, on the application of the founders, been granted to them in 1837 by the Hyderabad Government. The defence was that the grant relied on by the plaintiffs was a forgery,

and that the real grant had been made by the Officer Commanding the Hyderabad Subidiary Force in 1838, not to the predecessors in title of the plaintiffs personally, but to, and for the benefit of, the whole Parsi Community. *Held*, that the documentary evidence supported the plaintiffs title. The document, on which they relied, (which was held to be genuine), was issued by an Officer of the Hyderabad State, and purported to express a transaction, by which the State had assented to the grant of the land to the two founders by name, and directed possession of it to be delivered to them. That relied on by the defendants (which had also been applied for and obtained by the founders) was a document issued by order of the Military authorities, who could not be held empowered to alienate in perpetuity land forming part of the Cantonment for a purpose wholly inconsistent with military requirements. It was, moreover, not a grant, but a document giving permission to use the land, already conveyed for the particular purpose of a Tower of Silence and to enclose the land, matters obviously within the discretion of the Commanding Officer as possibly affecting the convenient occupation of the Cantonment. The effect of the two documents was to show a good title in the founders and not in the Parsi Community. That view was confirmed by the fact that the founders admittedly enclosed the land and erected a Fire Temple in connexion with it on land acquired by private purchase, and that the evidence showed that the possession, management and control of the Tower of Silence and of the land, on which it stood, were in the founders, who for many years afterwards bore the whole expenses of the establishment and all costs of maintenance and repair; and that in the early years after the acquisition of the land and erection of the Tower (the events of which were more important than those in later years when the circumstances of the parties had somewhat changed) the priests referred such difficulties and questions as arose for the orders of the founders and obeyed those orders. (P. C.)

Pestonji Jivanji v. Shapurji Edulji Chinoy, 35 Calc. 478.

Guardians and Wards Act Sections 29 and 31—Guardian and minor—Mortgage of minor's property to secure a loan sanctioned by the Court—Interest.—In all cases where sanction is given for the raising of loans on the security of the property of minors, it is the duty of the Judge granting sanction to specify in his order of sanction not only the amount to be raised and the property to be mortgaged, but also the rate of interest, or at least the maximum rate of interest, at which the loans are to be raised. If nothing is said in the order as to the rate of interest, the lenders are entitled only to a reasonable rate of interest

on the moneys advanced. *Ganga Pershad Sahu v. Maharani Bibi*, 11 Cal., 379, followed. *Bannerji & Richards J. J.*

Thakur Prasad v. Gauripat Rai 30 All. 188.

High Court—*Power of S. 15 of the Charter Act—Interfering with order of Presidency Magistrate—Criminal Procedure Code S. 203—Order under—Dismissal of complaint—Rule issued by High Court—Magistrate's duty to show cause* Independently of the Code of Criminal Procedure—the High Court has jurisdiction under S. 15 of the Charter Act to interfere with the order of a Presidency Magistrate dismissing a complaint under S. 203, Cr. P. C. and decree a further inquiry.

There is no form of judicial injustice, which the High Court if need be, cannot reach under the Charter Act. *Geidt & Woodroffe J. J.*

Lekhraj Ram v. Debi Prasad, 12 C. W. N. 698

Hindu Law—*Impartible estate—Previous suit compromised effect of compromise—Interpretation.* The widow of the last holder of an impartible estate was in possession of that estate under a will. Her husband's nephew brought a suit to contest the will and to recover possession of the impartible estate. The suit was compromised, the widow being left in possession during her life time of the estate as gaddinashin, but without the power of transfer or charge the estate in any way, an annuity of Rs. 12000 per annum being settled upon the nephew, and it being declared that after the death of the widow, the nephew or any representative (*Kaimmokams*) of his, who may be alive at the time shall be the absolute owner (*malik mustaqil*) of the estate and shall occupy the gaddi.

Held upon the construction of the compromise that the character of the estate as it had been handed down from father to son for generations was not changed, that the nephew took an absolute vested interest in the property the enjoyment of it being postponed during the life of the widow and that upon the death of the nephew the estate devolved according to the rules of primogeniture governing impartible estates and did not pass to the widow of the nephew as the estate governed by the ordinary rules of Hindu Law. *Stanley C. J. & Bannerji J.*

Harpalsing v. Lekhraj kumar 5 A. L. J. 425.

———**Joint Hindu family**—*Suit by one member against others to recover debt due to family realised by him.* Where one member of a joint Hindu family governed by *Mitakshara* law realises a debt due to the family, no suit of the kind contemplated by article 62 of the second sche-

dule to the Limitation Act, 1877, can be brought against him by the other members. But if at partition unrealised debts are left undivided and are subsequently realised by one member of the separated family the claim of the other members to recover their shares in the realisations is governed by that article.

Tarachand v Pranchand, 5 Nag. L. R 84.

———**Joint family—Mortgage by uncle for personal benefit.** Appellant held a decree against his uncle Gendan and got him arrested in execution. Gendan Lal in order to pay him executed a mortgage bond hypothecating a joint family property to the respondent. The joint family consisted of himself and appellant. The creditor sued appellant who pleaded that his uncle could not hypothecate joint family property to pay up a decree which he (appellant) held against him.

Stanley C. J. & Bannerji J.

Ramratan v. Lachmandas, 5 A. L. J. 417.

———**Liability of sons for father's debts—Defence that debts were incurred for immoral purposes—Burden of proof.** According to the Hindu law of Mitakshara school it is not necessary in order to establish a son's liability for his father's debt that it should be shown that the debt was contracted for the benefit of his family. It is sufficient in order to establish the liability of sons to pay a personal debt of his father, if the debt be proved, and the sons cannot show that it was contracted for immoral purposes or was such a debt as does not fall within the pious duty of the sons to discharge. *Maharaj Singh v. Balwant Singh* 28 All., 508, distinguished. *Kishan Lal v. Garurudhwaja Prasad Singh*, 21 All., 238 and *Karau Singh v. Bhup Singh*, 27 All. 16, followed. *Nanomi Babuasin v. Modhun Mohun*, 13 Cal., 21, referred to.

Where in such a case as above, the sons set up the defence that the debt was incurred for immoral purposes, the burden of proof is on them and not on the creditor. *Debi Dat v. Jadu Rai* 24 All., 495 followed. *Jamna v. Nain Sukh*, 9 All., 493 dissented from.

And merely general evidence of profligacy on the part of the father is not sufficient.

Bannerji & Richards J. J.

Babu Singh v. Behari Lal, 30 All. 156.

———**Joint Hindu Family—Mitakshara—Co-parcener when joint alienating—Mortgagee, right of—Partition—estoppel.** During the subsistence of co-parcenership, a co-parcener in a joint Hindu family governed by the Mitakshara law cannot alienate his own share of the family property.

On the severance of the family by the decree in a partition suit, the mortgage which was in the nature of an inchoate right became perfected as regards the share of the mortgagor.

Semble : The co-parceners A and B who purchased the interest of another co-parcener C under the money decree obtained in a partition suit with full knowledge of the mortgage in favour of the plaintiff by C, are estopped from contesting the right the plaintiff had.

Mittra & Caspersz J. J.

Prasidh Narain v. Janki Singh, 7 C. L. J. 644.

———**Joint Hindu Family**—*Single member of family not competent to alienate his undivided share in the family property.* Held, that a member of a joint Hindu family other than the father or managing member is not competent to alienate his undivided share in the joint family property without the consent of his co-sharers. *Chander Kishore v. Dampat Kishore*, 16 All, 369 dissented from. *Upooroop v. Lalla Bandhjee Suhay*, 5 Cal., 749 referred to. *Karamat Husain J.*

Jamna Prasad v. Jagdeo, A. W. N., 1908, 163.

———**Maintenance**—*Widowed daughter in law—Plea in defence that the widow did not live with the husband during his life-time, not good.* A Hindu wife who without sufficient cause left her husband and lived apart from him during his life-time does not forfeit her right to maintenance against the ancestral estate in the hands of the father-in-law after her husband's death,—provided she is not otherwise disqualified thereto, e. g., by unchastity etc.

Per *Wallis J.*—But it is open to the Court to have regard to her conduct in so having separated from the husband, in fixing the amount of the maintenance. It is the right and also the duty of a Hindu wife to return to her husband after separation from him.

Per *Sankaran Nair J.* The husband is under a moral obligation to maintain his wife though living apart. He is bound to support her though he should have no property at all; if she quits him without any adequate excuse, he is not in law bound to maintain her.

The right to maintain is one accruing from time to time, and a widow's right to it depends upon her wants and exigencies. The obligation of a Hindu husband to maintain the wife is quite distinct from that of the father-in-law to maintain a widowed daughter-in-law and the fact she did not live with her husband while alive is no answer to a claim for imman-

tenance against the father-in-law in possession of the ancestral property, on the husband's death.

Wallis & Sankaran Nair J.

Surawpalli Baigaramma v. Surawapalli Brampagee, 18 M. L. J. 254.

———**Succession—Competition between full sister and half-brother's son—Mitakshara—Sister's place in the line of heirs—Vyavahara Mayukha, views of, on the point—Value of the commentaries of Balambhatta and Nanda Pandita—Conflict between Mitakshara and Vyavahara Mayukha—Rule as to harmonising the difference** In cases governed by the Mitakshara, a sister comes in as heir to a deceased Hindu immediately after the grandmother, so that, where the competition is between her and a half-brother's son, the latter, being higher in the line among heirs specifically mentioned in the Mitakshara, is entitled to preference over her as heir, though it would be otherwise in cases governed purely by the law of the Vyavahara Mayuka.

The interpretation put by Westropp, C. J., upon Balambhatta's texts in *Sakharam Salushiv Aahikari v. Sitabai* (1879) 3 B.m. 353 commented upon and dissented from except in cases where the Vyavahara Mayukha alone is applicable.

Rudrapa v. Irava (1903) 28 Bom. 82, explained.

It is a well established rule of the Bombay High Court that where the Mitakshara is silent or obscure, the Court must, generally speaking, invoke the aid of the Vyavahara Mayukha to interpret it, and harmonise both the works, so far as that is reasonably possible.

Chandavarkar & Knight J J.

Bhagwan v. Warubai, 32 Bom. 300.

———**Disqualified heir—Widow of the disqualified heir—Exclusion from inheritance—Rule as to construction of Hindu Law texts.** The wife or widow of a disqualified Hindu does not become incapable of inheriting property merely by reason of her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude a person from inheritance under Hindu Law.

Chandavarhar & Knight J. J.

Gangu v. Chandrabhagabai, 32 Bom. 275.

———**Succession—Exclusion from inheritance—son of a disqualified heir is not excluded from inheritance—Vesting of—Estate in widow—Subsequent birth of a son to the disqualified heir does not divest**

the estate. M, a Hindu died leaving him surviving a widow, and three sons who were deaf and dumb and who were disqualified from inheriting under Hindu law. M's widow accordingly succeeded to the estate of her husband; after M's death, one of the disqualified sons married, and a son was born to him. The widow then sold his property to plaintiffs, who sued to recover possession thereof from the defendants (the wife and son of the disqualified son). The defendants contended that the sale was made without necessity and was therefore not binding on the defendants.

Held, that the plaintiffs were entitled to succeed, since both in fact and in contemplation of law the son of the disqualified son had no existence when the estate vested in the widow; and his subsequent birth could not divest the estate.

Held, further, that the son stood in no better position than would have been occupied by his father, if the latter's disqualification had been removed after the widow's title would prevail in as much as it was superior to his while his disqualification lasted. *Bapuji v. Pandurang*, 6 Bom 616 followed. *Krishna v. Samal*, 9 Mad. 14 not followed.

Batehelor & Heaton J. J.

Pawadewa v. Venkatish, 10 Bom. L. R. 559.

Hindu Law—Succession Mitakshara.—*Stridhan of a maiden—Father's mother's sister—Maternal grand-mother—Priority between.* Under Hindu Law—the father's mother's sister is entitled to succeed to the *Stridhan* of an unmarried female in performance to her maternal grand mother.

Chandavarkar & Heaton J. J.

Janglubai v. Jetha, 10 Bom L. R. 522.

——— *Widow's estate—Simple bond executed by Hindu widow for legal necessity—Decree, personal—Sale does not affect reversioners.* A Hindu widow was sued on a simple bond executed by her for legal necessity, and property left by her husband was sold in execution of the decree obtained in the suit.

Held—That the bond did not bind any immoveable property and the interest of the reversioners was not affected by the sale.

Rampini & Sharfuddin J. J.

Giribala Dassi v. Shri Nath Chandra Singh, 12 C. W. N. 769.

——— *Widow's estate—Simple debt due by a widow—Legal necessity—Only life estate saleable in execution.* When a creditor lends money to a Hindu widow on her personal security and not upon any mortgage of

husband's property, any decree which he obtains on his simple money bond can only bind the rights and interests of the widow, even though the loan was incurred by her for legal necessity. *Knox & Aikman J.*

Kallu v. Faiaz Ali Khan, 5 A. L. J. 367=1908, A. W. N. 173.

———**Widow—Sale by widow—Legal necessity—Right of reversioner to have sale set aside** Held that a reversioner has no right to have a sale made by a Hindu widow of her husband's property set aside even upon payment of the full sale consideration where the legal necessity for the sale is co extensive with the whole consideration. *Govind Singh v. Baldeo Singh* 25 All, 330) and *Ramji Munwar v. Abu Jafer* 27 All, 494) distinguished.

Stanley C. J. & Karama Husain J.

Rachubar Dayal v. Akhtai Khan A. W. N., 1908.

———**Will—Construction of—Hindu widow—Dedication of property to idol, if valid—"Malik" meaning of Words—If imply absolute ownership—Limited grant, if and when effective—Suit for declaration of property to be debutter—Civil Procedure Code, Ss. 234, 280—Mortgage decree, S. 244, applicability of.** The effect of the word "Malik" is to confer on the donee a heritable and alienable estate. *Mussamut Kollany Koer v. Luchmee Persad* and *Lalit Mohan Singha Roy v. Chukkun Roy* followed.

But the effect of the word "malik" may be modified by the context, or in other words, in order to cut down the full proprietary rights that the word imports, something must be found in the context to qualify it. *Su-rajmani v. Rabinath Ojha* followed.

The Court must, in construing a will, look at all the clauses of the will, and give effect to all the clauses ignoring none as redundant or contradictory.

Held, on a construction of the Will in the present case, that there is ample indication in the context to displace the presumption of absolute ownership implied in the word "malik" and to justify the conclusion that the gift in favour of the widow must be cut down to something less than a full proprietary right with power of alienation that it is impossible to maintain that any absolute devise was made to her, that she took a limited estate under the Will, that so far as the Will is concerned her powers of alienation were confined to the dedication of property for the benefit of the ancestral idol, and the alienation of the property in case of necessity; and that the dedication to a new idol she had established or installed is invalid and the dedicated property is not debutter. *Stephen & Mookerjee J. J.*

Shib Laxman v. Shrimati Tarangini Dasi 8 C. L. J. 20.

———Will—Construction—Bequest to "daughters and their respective sons"—Restriction of descent to male issues—Absolute or life estate—Woman's estate—Survivorship between daughters—Spiritual benefit—Remainder over to sons—Gift over to daughters on failure of adoption—Succession Act, Ss 82, 116, 117. In construing the Will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, specially an ancestral estate, shall be retained in his family, and it may be assumed that a Hindu knows that as a general rule, at all events, woman do not take absolute estates of inheritance which they are enabled to alienate.

In the Will of a Hindu drawn up in the English language and probably by an English solicitor who was one of the attesting witnesses, it was provided in case of the failure of a prior bequest in favour of a son to be adopted to the testator (which bequest in fact failed) that the estate was to be made over to and divided between his two daughters in equal shares, "to whom and their respective sons he gave, devised and bequeathed the same." There was a proviso that in the event of one of the daughters dying without leaving any male issue surviving, the share of the deceased daughter was to go to the surviving daughter and her sons—to the exclusion in both cases of female issue. Further that "in the case of the death of either daughter leaving sons, the share of such daughter was to be paid to such her son or sons, share and share alike."

Held that under the Will the testator's daughters whom he incontestably intended to benefit were to have no more than what is generally known to be a woman's estate in his property.

That the testator intended to create in their favour an estate for life with a remainder over to their sons. That in the events that happened the daughters were entitled to the testator's estate in equal shares for life and with the benefit of survivorship between themselves. (P. C.)

Radha Prasad Mullick v. Ranimoni Dassi, 12 C. W. N. 729=10

Bom. L. R =5 A. L. J. 460.

———Will Dayabhaga—Widow when merely entitled to maintenance, if can contest validity of grant to *Thakure*—Maintenance, right to and amount, if can be limited by Will—Residence, restriction as to place of—"Just cause" for disregarding restriction—Concubines, objection to living in the same house with—Uninhabitable house. Where a testator died leaving a widow and an adopted son.

Held, that the widow could ask for a construction of the Will only in

so far as it affected her claim to maintenance and not of the whole Will. *Brindra v. Radhika*, 11 Cal. 492; *Garabini v. Pratap*, 4 O. W. N. 602 referred to.

That she has no *locus standi* to question the validity of certain provisions in the Will relating to the establishment and maintenance of certain Thakurs. A widow cannot be deprived of her right to maintenance by any provision in a Dayabhnga Will.

Per Caspersz J.—The amount of maintenance fixed by the testator when it is not a nominal amount not contrary to any provision of Hindu law can not be varied by Court.

Per Coxe J.—The husband has no right to reduce the amount of a chaste widow's maintenance below the proper provision, which has to be calculated on (i) the value of the estate, (ii) the position and status of the deceased husband and the widow. Great weight should, however, be attached to a statement in the husband's Will as to the amount, not as a legal limitation to the amount, nor as a legal limitation to the widow's right but as evidence of what in the husband's estimate a lady in the position of his widow should need. But a husband may within limits lay down that his widow shall forfeit her maintenance if she does not live in the family house.

Per Caspersz J.—A Hindu widow is not obliged to live a life of asceticism. She is bound to perform various religious, social and domestic ceremonies. She is not entitled to a bare subsistence or a straining allowance.

Where the Will provided that the widow was to receive Rs. 125 a month as maintenance provided she lived either in his house at Madhupur or his house at Benares and it was found that testator's concubines lived in the Benares house and the Madhupur house was uninhabitable, and the widow proposed to live with the adopted son in Calcutta.

Held (per curiam) that she had just cause for refusing to live in the Madhupur or Benares house and a sum of Rs. 125 a month was a proper allowance for her maintenances and the said amount should be made a charge upon the estate.

Semble—Gifts to idols which are to be established after the testator's death are bad in law. *Upendra Lall v. Hem Chandra*, 25 Cal. 405; *Rojomoyee v. Troyluckho*, 29 Cal. 260; *Nagendranath v. Raja Benoy* 30 Cal 521

Caspersz & Coxe J. J.

Promotha v. Nagendrabala 12 C. W. N. 808,

—Will—Intention of the testator—Rules of construction—Absolute
A separated Hindu having no issue, made a will in which it was stated

that he was to remain 'Malik' of the property, during his life-time, that after his death his wife and his sister-in law were to be the 'Malik,' that his wife so long as she continued chaste, and his sister-in-law were to maintain themselves from the rents of the property and were not to alienate it without urgent necessity. At the end a postscript was added to the following effect :—

"My wife and my sister-in-law are empowered to alienate the immovable property in which none else has any interest or any claim."

Held that the beneficiaries acquired an absolute interest in the property *Held* further, that in construing such a will the Court will be guided by the following rules :—

(1) The Court will as far as possible ascertain the intention of the testator from the contents of the will itself read as a whole. (8 Bom L. R. 482).

(2) Where some of the provisions of the will are irreconcilable and there is no other guide to the intention of the testator, the last words must prevail (7 Bom L R 236)

(3) If the will contains a clear expression of the intention, effect must be given to it. Unambiguous dispositive facts are not to be controlled or qualified by any general expression of intention.

(4) The meaning to be attached to words of a will may be affected by surrounding circumstances, *e. g.*, the state of testator's family, what issue or other relations he has left, the usual customs, practices, notions and wishes of his race or caste and the Court will take into consideration these circumstances in construing the will.

(5) "To my wife, her children and grand children," "To my wife, her heirs and assigns or other clear words of inheritance, or words which clearly give a power of disposition show an intention to confer a heritable and alienable estate; so also do the words "shall become 'malik' of my property, or "I appoint my wife to the 'malikatwa' as exercised by myself" unless there be an indication of a different intention.

(6) If an absolute estate be clearly given, and the words are superadded restricting the power of alienation, or other proprietary rights, the restriction is repugnant to the grant and therefore invalid.

Goverdhandas v. Vantbai. 1 Sind. L. R. 21.

Interest Act—Hindu law on interest when to be invoked. In order to bring a case under the provisions of the interest Act, two things are essential : namely (1) an agreement or usage to pay interest and (2) a demand in writing.

The Hindu law is not binding on the courts on questions of liability to pay interest. *Kamalimal*, 20 Mad, 481 followed. *Saundaapa*, 31 Bom. 354 dissented from. *Wallis & Sankaran Nair J. J.*

Subramania Aiyar v. S. A. Subramania Aiyar, 18 M. L. J. 245.

Jurisdiction.—*Pre-emption—Decree—Sum payable as price exceeding Court's pecuniary jurisdiction.*—*Held*, that a Court has no jurisdiction to pass a decree for pre-emption where the sum payable as price of the property exceeds the limits of the court's pecuniary jurisdiction.

Clarke C. J.

Fata a. Khan Bahadur, 3 P. W. R. 323.

—————**Jurisdiction of Civil or Revenue Court—Suit for declaring Muqarrari Dari rights in land cognizable by a Civil Court—Punjab Tenancy Act XIV of 1887, section 77 (3) (d)** *Held*, that a suit for obtaining a declaration to the effect that plaintiff is a Moqarrari Dar of certain Revenue paying land is cognizable by a Civil Court and does not come under section 77 (3) (d) of Act XVI of 1887. *Reid J.*

Nawab Khan v. Sewadas, 3 P. W. R. 313.

—————**Civil or Revenue Court—Hag Bue or door tax is a village cess—Suit for declaration that a person is not liable to pay Hag Bua** *Punjab Tenancy Act XVI of 1887, section 77, (3) (j)* *Held* that Hag Bua or door tax is a village cess within the meaning of clause (j) of sec. 77 (3) of the Punjab Tenancy Act XVI of 1887, and that a suit for declaring that certain persons are not liable to pay Hag Bau to the village proprietor is a revenue suit cognizable by a revenue and not by a Civil Court. (F. B.)

Karim Khan v. Respondents, 3 P. W. R. 803.

—————**Succession to property lying within British territory dispute as to—Hill Tipperah Raj—Declaration of contingent right, suit for, if maintainable—Specific Relief Act, section 42.** *Held* (Doss J. *Debitante*). The appointment of Jubraj by the Raja of Tippiarah is an Act of State by a Sovereign Prince and the Municipal Courts cannot question the validity of that appointment. *Beer Chunder Manikya v. Raj Roomer Nobedee Chunder Deb Burmuono*, 9 Calc. 535 followed. *Nulkisto Deb v. Bur Chunder Thakoor*, referred to.

Per Curiam.—A person cannot sue for a declaration of his legal unless the contingent right which may never ripen into an actual existing right is not sufficient to ground an action for a declaration that the defendant

has no right of succession to the property. *Marlean C. J. & Doss J.*

Samarendra Chandra Deb Barman Bara Thakur v. Birendra Kishor Das Barman, 8 C L J. 12 = C. W. N. 77.

Kathiawar—C. P. Code, ss. 26, 27, 32—Non joinder of a brother. Even if a family is joint a plaintiff without joining his brother can maintain a suit against a defendant who had accepted him as sole plaintiff, and a brother can not be forced to join as a plaintiff in spite of his own sworn denial that he had any interest in the suit.

Bechar v. Bhima, 18 K. L. R. 6.

———**Sec. 43—First suit on bond given for salary due—Second suit for subsequent year's unremunerated service—No Bar.** A servant sued his master on a bond given to him for salary due for service rendered. He brought a subsequent suit for salary due for service of subsequent years.

Held that the subsequent suit was not barred for the cause of action was different in the second case.

Kamdar Jivram v. Jivubai, 18 K. L. R. 32.

———**Sec 235—Exemption of girls from sale in execution—Suit as representative of deceased husband—Personal decree—Execution.** Where a talukdar's widow is sued as representative of her deceased husband she cannot be personally liable beyond what she inherited from him.

Saruyas Matubhai v. Doshi, 18 K. L. R. 29

———**Secs 102, 558—Dismissal of appeal for default—Pleader engaged in lower Court asked to pray for adjournment without Vakilatnama.** An appellant who was informed of the date of hearing his appeal asked his pleader in the lower Court who was not given a vakilatnama for appeal to appear and pray for adjournment for he had to celebrate his brother's wedding.

The Court seeing that the pleader had no vakilatnama dismissed the appeal for default; on an application to restore the appeal to file.

Held, that the pleader was not legally authorised; and that he required a fresh vakilatnama for appeal; that there was no appearance within the meaning of sec. 102 of the C. P. Code and that the Court could not exercise its discretion in favour of a litigant who left matters to chance instead of approaching the Court properly.

Joishi Narbheram v. Virji, 18 K. L. R. 27.

———**Interest—Kathiawar Chief—12 p. c. interest by way of damages—Compound.** Where a plaintiff who lent money to a ruling

chief when he was an expectant heir, at 12 p. c interest, it was allowed for there was considerable risk in advancing money and the plaintiff knew that he had to lock up his capital as well. The Court did not allow further interest by way of damages where it appeared that the defendant had not deliberately withheld payment in spite of being able to pay. Though Courts do not lean towards compound interest yet where it is distinctly stipulated for, it is not disallowed in the absence of disentitling circumstances.

Mistry Madhavji v. Malek Jivan Bhanji, 18 K. L. R. 14.

———**Practice**—*Refusal to accept summons sent by registered post*—*Not sufficient service.* The mere fact of refusal to accept the summons sent by post is hardly enough to prove satisfactorily that it was the defendant who refused. The presumption must be supported by independent evidence that the defendant lived at the time of refusal where the summons was refused and that it was he who refused it.

Meman Abdulla v. Meman Dada, 18 K. L. R. 1.

———**Second appeal**—*Mixed question of law and fact.* A second appellate Court can scrutinize the evidence on a point of mixed law and fact.

Bechar v. Patel Bhima, 18 K. L. R. 5.

Lambardar and co-sharer—*Power to deal with coparcenary lands—Lease for seven years.* In the absence of a custom to the contrary a lambardar has no power, without the consent of the co-sharers, to grant a lease of coparcenary land beyond such term as the circumstances of the particular year or season may require. *Chattray v. Nawala*, 29 All., 20, followed. *Mukhta Prasad v. Kamta Singh*, Weekly Notices, 1906, P. 277, distinguished. *Stanley C. J. & Burkitt J.*

Tikam Singh v. Khubi Ram, 30 All. 163.

Land Acquisition Act (1 of 1894)—**Declaration**—*Land actually acquired not mentioned*—*Reference to Civil Court.* When land actually taken up by Government is different from that mentioned in the declaration issued under the Land Acquisition Act, the proceedings of the Collector are void and there can be no valid reference to the Civil Court.

Rampini & Sharfuddin J. J.

Gojendra Sahu v. The Secretary of State for India, 3 C. L. J. 39.

———**S. 3-(a)**—**Fishery Rights**—**"Land"**—**Jurisdiction.** The Land Acquisition Deputy Collector of Balasore, on the 3rd March 1903, gave notice

of the intention of Government to acquire certain fishery right over land at Chandipur, which land had previously been acquired by Government under a declaration dated 10th February 1896; and the Land Acquisition Judge, on a reference by the Deputy Collector, awarded a certain sum, as compensation for the acquired fisheries. The claimant appealed from the decision of the Land Acquisition Judge, contending that the fishery rights being neither 'land' nor 'profit arising out of land' could not be acquired under the Land Acquisition Act. *Held*, allowing the appeal, that incorporeal rights cannot be acquired without the land, over which they are exercised; that what is to be acquired under the Land Acquisition Act is the aggregate of rights in the land and not merely some subsidiary right, such as fishery rights,

Rampini & Sarfuddin. J. J.

Shyam Chunder Mardraj v. Secretary of State. 35 Calc. 525.

———**S. 49—House, manufactory or building**—Acquisition of part only required—Whether whole must be purchased. Land which is not house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the "house, manufactory or building" within the meaning of section 49 of Act No. I of 1894. Whether or not the land is so reasonably required is a question of fact depending upon the particular circumstances of each case. *Khairati Lall v. The Secretary of State for India in Council* 11 All., 378, distinguished.

Bannerji & Richards J. J.

Nita Ram v. The Secretary of State for India in Council 30 All. 176.

Landlord and Tenant—Abatement of rent—portion of which tenant did not obtain possession—Bengal Tenancy Act, (VIII of 1886), secs. 38 and 52. Where in a suit for rent a tenant who did not obtain possession of a portion of the lands let out to him, pleaded to pay rent of that portion.

Held—That he was entitled to say so and it was not necessary for him to bring a separate suit for abatement of rent.

That a suit under secs. 38 and 51 of the Bengal Tenancy Act was not necessary, as those sections do not apply where the tenant has never been put into possession by the landlord. *Maclean C. J. & Doss J.*

Siba Kumari De' y v. Bipro Das Pal, Chowdhury, 12 C. W. N 767.

———**Tenant can have no prescriptive right during tenancy—Right to trees, &c.** During the subsistence of his lease, a lessee can never obtain ownership by prescription over any part of his leasehold,

The landlord is the owner of the trees standing on the land of his tenant and is entitled to carry away any part of the corpus of any such tree which may be severed from the soil.

In the absence of a contract or custom to the contrary, the tenant is entitled to the fruit and flowers forming the natural annual produce of the trees standing on his holding.

The dark red transparent resin called lac, which is deposited by an insect on the twigs of the patas tree is neither fruit nor flower. In the absence of a contract or custom to the contrary, the landlord is entitled to lac spontaneously deposited on trees standing in the lands of the tenant, and he may reasonably enter upon the holding to collect the same.

In the absence of a contract or custom to the contrary, where land has been let for agricultural purposes, neither landlord nor tenant may divert it to the propagation of lac.

Where owing to the tenant leaving a certain area of his land unploughed a lac bearing palas plantation has spontaneously grown up thereon, the landlord is not entitled to conserve the same to the detriment of the tenant's right to bring such area under the plough. Subject to the landlord's right to collect the existing lac from such area, the tenant may from time to time cut down such palas trees as offer an obstruction to his ploughing of the land for agricultural produce, but not otherwise. *Stanyon J. C.*

Hiria v. Mahomed Sirajuddin Khan, 4 Nag. L. R. 104.

——— *Concurrent lease—Rights of lessee—Assignment of Landlord's rights—Suit for rent against second lessee maintainable—first lease not expired.* The plaintiff executed a lease of certain property in favour of R, and before the expiry of the term of that lease, another lease in favour of S, who was authorised to recover the rent reserved under the previous lease from R. Held that the latter lease was what is known as concurrent lease and operated as an assignment of the landlord's interest during the term of the earlier lease. As assignee of landlord's rights, S was entitled to collect rents from the previous lessee. *Harmar v. Been*, B. & S. and K, 307 applied. *Stanley C. J. & Karamat Hussain J.*

Ram Anant Singh v. Shanker Singh, 5 A. L. J. 429.

Lease—Its non-forfeiture for infringing terms which is not its condition—Landlord and tenant. Held, that where a provision is not a condition of the lease but one of its terms, the infringement of that provision does not entitle the lessor to forfeit the lease and deprive the lessee of the use of the demised premises. *La'ch and J.*

Libel—*Newspaper article*—*Allegations of fact and bona fide comment*—*Privilege*—*proof of truth essential, when criminal offence imputed*—*Cause of action*—*Misjoinder of parties*—*Amendment*—*Limitation*—*Writers in public papers must be careful as to the language they use while commenting on the proceedings of Courts of Justice, and on matters of public interest; they should also be careful that they do not wantonly assail the character of others or impute criminality to them.* *Woodgate v. Ridout*, 4 F & F. 202, R. v. *Tanfield*, 42 J. J. 454, referred to. It is absolutely essential to differentiate between fair and *bona fide* comment and allegations of fact. Where a grave criminal offence is alleged as a fact regarding the public acts of a public man, nothing short of proof of its truth can avail the defendant in an action for libel; the allegations of fact must be either true or privileged. *Davis v. Shephstone*, 11, A. C. 187 and *Hunter v. Sharpe*, 4 F. & F. 983. Where a suit was instituted by six plaintiffs jointly, and five of them were held to be not entitled to proceed in the suit on the ground of misjoinder of parties and causes of Action, one plaintiff only being allowed to continue in the suit—*Held*, that the suit was not barred by limitation. *Sandes v. Wildemith*, (1893) 1 Q. B. 771, referred to

Maclean C. J. Harrington & Flecher J. J.

Barrow v. Hem Chunder Lahiri, 35 Cal. 495.

Limitation—*Possession, suit for*—*Mortgagee purchaser*—*Formal possession*—*Period from which limitation runs*—*Third person in actual possession*—*Ouster*. In execution of a mortgage decree the mortgagees purchased the property under mortgage on the 7th October 1888 and took formal possession of it on the 17th February 1893. The plaintiff who bought the property from the auction-purchaser brought a suit for possession on the 26th December 1901 against the mortgagor and his vendees, who were not parties to the mortgage suit.

Held, that the suit was barred by limitation as the cause of action accrued when the mortgage security ceased on the 7th October 1888.

In the case of a third person who had already purchased the property and obtained actual possession, delivery of possession as against the judgment-debtor alone, cannot amount to an ouster of the person in possession.

Caspersz & Sharfudin J. J.

Ramjan Mahomed v. Chunder Mohun Aditya. 7 Cal. L. J. 640.

———**Sec. 4—Punjab Courts Act (VIII of 1874) sec 70 (1) (b)**—*Revision civil cases*—*Question of law*—*Limitation not set up as defence*—*Omission to consider if the suit is barred by limitation material*—*Material irregularity*. Under section 4 of the Limitation Act a Court is

bound to dismiss a suit if it is barred by limitation—even when the bar is not set up as a defence and the Court commits a material irregularity if it omits to consider whether the suit is barred or not under the provisions of the Limitation Act.

Reid J.

Bhag Singh v. Dhirta Singh, 9 P. L. R. 429.

———S. 10—*Express trust—Trust for a specific purpose—Palla money kept with the brides' father can be recovered at any time.* The plaintiffs were husband and wife. On the occasion of their betrothal in 1871, a sum of Rs. 366, being the amount of the female plaintiff's *palla* or dowry was made over by the husband's father to the keeping of the wife's father as a fund constituting her *palla* in accordance with the usual practice prevailing in the caste. This fund having been misappropriated either by the original trustee or after his death by his legal representatives a suit was instituted against the latter to recover the sum. It was contended in answer that the suit was barred.

Held, that S. 10 of the Limitation Act, applied to the case, and that it was, therefore, not barred. A suit to recover trust money is a suit to follow the trust property within the meaning of S. 10 of the Limitation Act, 1877.

S. 10 of the Indian Limitation Act, requires, as conditions precedent to its applicability, first, that the suit should be against a person in whom property has become vested in trust for a specific purpose or against his legal representatives or assignor and, secondly, that the suit should be for the purpose of following such property in his or their hands.

The phrase "trust for a specific purpose" in S. 10 is merely a mere expanded mode of expressing the same idea as that conveyed by the expression "express trust" of English law. It is used, in the section, in contradistinction to trusts arising by implication of law, trusts resulting, and trusts constructive.

Batchelor & Heaton J. J.

Bhurabhai v. Bai Ruxmani, 10 Bom. L. R. 540.

———Sec. 19—*Limitation—Acknowledgment of debt—Guardian and minor—Capacity of natural guardian to acknowledge a debt on behalf of his ward.* Held by BANNERJI and RICHARDS J. J. (STANLEY C.J., *dissentiente*) that when a guardian acting within the scope of his authority and for the benefit of a minor makes an acknowledgment of a debt, such acknowledgment is by an agent duly authorised in this behalf and gives a fresh start for the computation of limitation. *Tilak Singh v. Chutta Singh* 26 All. 292 distinguished.

Per STANLEY, C. J., the relation of guardian and ward resembles rather that of the trustee and *cestui que trust* than that of principal and agent. A guardian cannot be considered the authorised agent of his ward for the purposes of making an acknowledgment of a debt on behalf of his ward within the meaning of section 19 of the Indian Limitation Act.

Stanley C. J. & Richards J.

Pam Charan Das v. Guya Prasad, 1908, A.W.N., 175=5 A.L.J. 375.

— — — **Sec 19—Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement—It need not be addressed to any one.** On the 11th July 1900, a decree was passed against the defendant directing him to pay a certain amount in fixed instalments: the whole amount became payable on default of paying three instalments. The plaintiff presented an application on the 14th July 1903 for execution of the decree for the whole amount alleging that the default contemplated had occurred. To this, the defendant submitted a written statement signed by himself, bearing date the 28th September 1903, wherein he contended that the decree for the whole amount could not be executed, inasmuch as with reference to the second instalment he had deposited its amount with a third person and had given a notice to the plaintiff asking him to take the amount from the third person. As to the third instalment, his submission was that he had no means to pay its amount then and time should therefore be granted to him. The Court held that three defaults had not occurred and dismissed the darkhast.

On the 24th September 1906, the plaintiff gave another darkhast to recover the amount of the aforesaid two instalments, which remained unpaid. The Subordinate Judge dismissed the darkhast as time-barred.

Held, that the statement by the defendant as to the second instalment was an acknowledgment of liability within the meaning of sec.12 of the Limitation Act.

Held, further, that the statement by the defendant as to the third instalment that he was unable to pay and that he would pay if time were given to him, was a distinct acknowledgment of his liability.

Held, therefore that the second darkhast was within time.

There is nothing in the language of section 19 of the Limitation Act to justify the narrow interpretation that the acknowledgment under the section must be addressed to the creditor or some one on his behalf.

Chandavarkar & Heaton J. J.

Shrinivas v. Narhar, 32 Bom. 296.

—————**art. 91**—*Suit for cancellation of a deed*—*Suit for a declaration that the transaction evidenced by the deed was fictitious.* A suit for a declaration that a transaction embodied in a particular deed was from its very inception a sham transaction is to be distinguished from a suit for cancellation of the deed. The former kind of suit does not fall within the purview of article 91 of the second schedule to the Indian Limitation Act.

Stanley C. J. & Bannerji J.

Jagurdeo Singh v. Phuljhari, A. W. N., 1908, 156.

—————**Arts. 110, 116**—*Suit to recover royalty.* A suit for recovery of royalty on a registered instrument is governed by art. 116 and not art. 110 of the Limitation Act. 19 Cal. 489, followed.

Bhola Nath v. Raja Durga Prasad, 12 C. W. N. 724.

—————**Arts. 111 and 132**—*Suit by vendor to enforce charge for unpaid balance of purchase money.* Held that the suit for the enforcement of the payment of purchase money by sale of the purchased property is a suit to enforce a statutory charge differing from the lien which an unpaid vendor in equity possessed for the recovery of the balance of his purchase money, and that the article of the Limitation Act applicable is article 132 and not article 111. *Webb v. Macpherson*, 31 Cal. 57; *Har Lall v. Muhamdi*, 21 All. 454; and *Ram Krishna Ayyar v. Subramania Ayyer*, 29 Mad. 305 followed. *Baldeo Prasad v. Jit Singh*, Weekly Notes. 1821, 133, overruled.

(F. B.)

Munir-un-nissa v. Akbar Khan, 30 All. 172.

—————**Art. 116**—*Limitation*—*Suit for compensation for the breach of a contract in writing registered.* A registered mortgage bond provided that the amount secured by it should be paid by instalments and that in case of default the mortgagee would be entitled to take possession; further, that should there be any loss in the recovery of the amount due or in delivery of possession of the mortgaged land, the mortgagee would have power to realize the amount secured by the bond with interest at 1 per cent from the date of the cause of action till repayment, either from the person or from the property, movable or immovable, of the debtor, or from the property mortgaged.

Held that a suit based upon the foregoing covenant to recover the mortgage money upon failure of the mortgagor to pay instalments was in substance a suit for compensation for breach of contract, to which the limitation prescribed by article 116 of the second schedule to the Indian Limitation Act, applied. *Husain Ali Khan v. Hafiz Ali Khan*, 3 All. 60, referred to.

Stanley C. J. & Bannerji J.

Collector of Mirzapur v. Dewan Singh, A. W. N., 1908, 160.

———**Art. 120**—*Claim by mortgagee in possession to be declared owner—Starting point of limitation—No right to maintain a suit for possession when plaintiff is already in possession. Held, that the limitation for a suit by a mortgage with possession to get a declaration to the effect that he has purchased the equity of redemption and is in possession of property mortgaged as owner is six years, governed by article 120 of the 2nd from the date of the denial by the mortgagor of the title to possession as purchaser.*

Held also that a suit for possession of immoveable property cannot be maintained by a person in its actual possession simply on the ground that the defendant disputes the nature of plaintiff's possession. Reid J

Munshi Ram v. Hammi, 3 P. W. R. 373.

———**Art. 120.**—*Hindu law—Alienation by widow—Gift to daughter's sons—Suit to declare invalidity of alienation—Suit brought during lifetime of a daughter. Where a widow gave some property to her daughter's sons, and on her death when the property was in the hands of a daughter, other daughter's sons as reversioners brought a suit to declare the alienations invalid and the suit was brought more than 6 years from the date of the plaintiffs attaining majority.*

Held, that the case being governed by Art. 120 of the Limitation Act the suit was barred as it was not brought within six years from the accrual of the cause of action. The joint family is sufficiently represented by the eldest of the sons, and when he allows the suit to be barred a fresh cause of action or a fresh starting point or limitation does not arise on the birth of each new member on the family.

Venkayamma Garu v. Venkatrumanayamma Bahadur Garoo, 25 Mad., 678), Chirivolu Punnamma v. Chirivolu Perrazee, 29 Mad. 390. applied.

Benson & Miller J. J.

Krishnier v. Lakshmi ammall, 3 M. L. T. 319.

———**Art. 120 and 144, Sec 23**—*Suit for declaration and injunction—Right to take water—Continuing wrong. The plaintiff sued for a declaration that he had a right to take water for the use of his gardens from a canal which was under the control of the defendants and for an injunction ordering them to demolish a dam constructed by them for obstructing the flow of water.*

Held, that the general terms of section 23 are governed by the particular terms of the articles of schedules II of the Limitation Act and that

the suit was governed by section 23 read with article 120 and not by article 144 of the 2nd Schedule of the Act.

Joverdhandas v. Naraindas, 1 Sind L. R. 228.

———**Arts. 134, 144—Application of—"Purchaser," meaning of—Mortgages not a purchaser.** Article 144 and not 134 of the second schedule of the Limitation Act applies, where a person a successor of a mahant of a religious institution sues on the death of his predecessors for possession and setting aside mortgage executed by the latter. In such cases cause of action arises on the date of appointment of the plaintiff as mahant. The word "purchased" in article 134 is not used in the technical sense of the English law, but in the ordinary dictionary sense, and a mortgagee can not be regarded as purchaser of the property. If the plaintiff has not succeeded to the property as heir, article 134 is not applicable on this ground also.

F. B.

Bashesarlal v Bhainatha Singh, 9 Pun. L. R. 102

———**Arts. 135, 132, 144—Suit for possession of property—Mortgaged by way of conditional sale—Starting point for limitation.** Held, that a suit for possession of property, mortgaged by way of conditional sale, after foreclosure proceedings taken more than 12 years after the date for repayment of the mortgage consideration do not afford a starting point for limitation; a suit based on foreclosure proceedings taken more than 12 years after the date for repayment is barred by Limitation Act.

Reid J.

Mangal Singh v. Sher Singh, 3 Pun. W. R. 243.

———**Art. 139—Lessor and Lessee—Adverse possession—Non-payment of rent, if creates adverse possession—Lessee holding over.** If a lessee holds over after the expiry of the lease and if no subsequent arrangement is arrived at between him and his lessor by which a new tenancy is created, time begins to run under article 139, Schedule II of the Limitation Act, against the lessor from the date of the expiry of the lease. *Kanthappa v. Sheshappa*, 22 Bom. 893, and *Chandra v. Daji Bhau*, 24 Bom. 504 followed. *Adimulam v. Ravutham*, 8 Mad. 424 dissented from.

Brett & Sharfuddin J. J.

Madan Mohan v. Kumar Rameshwar, 7 Cal. L. J. 615.

———**Arts. 141, 144—Limitation—Adverse possession—Claim for possession of a Hindu, leaving widow and other heirs—Abandonment by widow—Starting point of Limitation.** When a widow (bound either by Hindu or Customary Law) on her husband's death does not assert her right

in her husband's property and expressly abandons them and its possession is immediately taken by one of the reversioners of her husband who begins to hold it adversely both to her and other heirs of her husband, the starting period of limitation for other heirs to succeed to that property is not the date of her death, but the date of her husband's death and article 144 applies and not article 141 of the Indian Limitation Act.

Johnstone & Hurry J. J.

Sahib Ditta v. Raju, 3 Pun. W. R. 229.

———**Art. 144**—*Stating point of—Adverse possession—Suit by landlord to eject a leasor holding under widows of an occupancy tenant—Mutation of names—Direction to bring civil suit by revenue authorities of no effect.* The last male occupancy tenant died in 1872, leaving two widows who became joint occupancy tenants. One widow died between 1878 and 1884 and the survivor died in March 1906. The ejectment suit was instituted in May 1906. The defendant set up adverse possession, based on mutation of names in his favour in 1888, and on subsequent possession as occupancy tenant and on unsuccessful objection by the father of some of the plaintiffs and failure by them to sue in the Civil Court as directed by the Revenue authorities.

Held that (1) plaintiffs were not bound to sue the defendant until the 2nd widow's death and he could not set up adverse possession and (2) that the direction merely meant that the Revenue authorities would maintain the entry in their records until the question of title was decided.

Reid J.

Gandasingh v. Qarm Khan, 3 P. W. R. 374.

———**Art. 148**—*Mortgage—Redemption—When the right to redeem accrues.* A mortgage was executed in 1828 and was made redeemable at the end of any native year from the date. The present suit for redemption was brought in 1902. *Held* that the suit was barred.

Sankaran Nair J.

Vishvendra Thirthas wuni v. Vishmurti Bhatta, 18 Mad. L. J. 235.

———**Art. 179**—*Execution of decree—Appeal—Appeal not pressed—Terminus a quo.* Where there has been an appeal from a decree limitation does not the less begin to run from the date of the final decree in appeal because the appeal may have been dismissed upon the representation of the appellants' counsel that he was unable to support it. *Jeeyangar v. Lakshmi Dass*, 16 M. L. J. 393 followed. *Hingan Khan v. Gauga Parshad*, 1 All. 298 and *Fazal Husin v. Raj Bahadur*, 20 All. 124 distinguished.

Aikman & Griffin J. J.

Fazlur-Rahman v. Shah Muhammad Khan, A. W. N. 1903, 161.

———**Art. 179.—Execution of decree—Defective application for execution—step-in-aid of execution when effective—Meaning of the words “in accordance with Law—No effect of issuing notice.** Held, that neither an application of execution by a decree which is not made “in accordance with law” nor the notice under section 248 C. P. C. issued thereunder, does give a fresh starting point of limitation under article 179 (4) and (5) of 2nd schedule to the Indian Limitation Act and that any other act done by the decree-holder towards further progress of the proceedings thereon, is not a “step-in-aid” of execution within the meaning of the said article.

Held, also, that “applying in accordance with law” means applying in terms of decree, to the competent court to do something the Court is competent to do; and that the words “in accordance with law” in article 179, govern the words “to the proper Court for execution.”

Held, further, that an application not in accordance with the decree does not also amount to “step-in-aid” within the terms of article (179) of the said Act.

Reid J.

Gangaram v. Durgi, 3 P. W. R. 325.

———**Art. 178, 179—Execution of decree—Decree as originally framed incapable of execution—Amendment of decree.** A decree for sale was obtained on foot of a mortgage. The decree was made absolute on 3rd February 1903. By mistake of the Court or its officers, the decree ordered the sale of a village which did not in fact exist. The decree-holders applied for correction of the decree, and on 14th November 1903, the correct name was substituted. Within three years from that date but upwards of three years from that of the order absolute, the decree-holders applied for execution of the decree. Held, that the application was within time. A decree ordering sale of a non-existent village is incapable of execution, as it would be impossible to comply with the provisions of the law as to making and affixing proclamation on the property. *Muhammad Suleman v. Muhammad Yar Khan*, 17 All. 39 relied upon.

Aikman & Karamat Husain J. J.

Bihari v. Risal, 5 A. L. J. p. 403.

Article 179 (4)—Execution of decree—Limitation—Application to take some step in aid of execution—Payment of process fees.—Held that the mere payment of process fees on an application for execution, unaccompanied by any application asking the Court to take some specific action, will not have the effect of giving a fresh starting-point for limitation

within the meaning of article 179 (4) of the second schedule to the Indian Limitation Act, *Thakur Ram v. Katwaru Ram*, 22 All., 358, followed. *Vijayaraghava'u Naidu v. Srinivasulu Naidu*, 28 Mad., 399, distinguished.

Aikman & Karamat Husain J. J.

Shoo Prasad v. In'ar Bahalur Singh, = 5. A. L. J. 258 = 30 All 159.

— — — **Art. 179—***'Application in accordance with law'—Application by representative of decree-holder whose name is not brought on, application in accordance with law—Civil Procedure Code, Ss. 232, 365, 366—A decree, dated 26th March 1898 in a certain suit ordered 'that plaintiff do recover the sum of against defendants Nos. 1, 2 and 3 and the hypothecated property' and it further ordered 'that the plaintiff is not entitled to execute the decree till fifth defendant's hypothecation is discharged by him.'* The decree-holder having died, his widow who was not brought on the record applied on the 12th February 1901 to execute the decree. The application was dismissed as the fifth defendant's hypothecation was not then discharged, but was only satisfied on the 29th October 1901. The question arising in subsequent execution proceedings whether the application of 12th February 1901 was one 'in accordance with law' within the meaning of article 179 of schedule II of the Limitation Act:—*Held*, that the application was in accordance with law. The terms of the decree only precluded recovery of the decree amount from defendants Nos. 1, 2 and 3 and the hypothecated property before the fifth defendant's debt was discharged and such discharge was not a condition precedent to an application for a conditional order directing a sale on plaintiff paying off such debt. On the death of the decree-holder the right to execute the decree devolved on his widow, who was entitled, without being brought on the record, to apply under section 232 of the Code of Civil Procedure for execution, as sections 365 and 366 of the Code of Civil Procedure apply only to the case of a plaintiff dying before judgment.

Benson & S. Nair J. J.

Alagirisamy Naidu v. Venkatachellapathy Ayyar 31 Mad., 76.

Madras Rules—Practice (Madras) Rule 463—Mortgage—Decree—*Petition by decree holders for decree absolute, not verified—Whether substantially in accordance with law, so as to save limitation.* The holders of a mortgage-decree put in an unverified petition under S. 89 of the Transfer of Property Act praying that the decree should be made absolute which petition was returned to them by the Court as not being in accordance with the Civil Rules of Practice. *Held*, that the application was not

one merely relating to the execution of the decree itself subject to the provisions of S. 235 of the Civil Procedure Code and falling as an application for execution under Act 179 of the Limitation Act when that article can be applied, and under art. 178 when it cannot. *Mallikarjunda v Lingamurthi*, 25 Mad. 245, followed.

Held also that the application cannot be regarded as one for notice to the judgment debtor for the mere reason that that the decree was more than a year old, and the case does not fall within the rule laid down in *Puchippa v. Poojali*, 28 Mad. 557.

Held further that, even as it stands, the petition having been filed with the decree and the defects therein not being such as to prejudice the judgment debtor or mislead the Court, was an application for execution in accordance with law sufficient to save limitation

Wallis & Miller J. J.

Ramayyyn v. Kadir Bacha, 3 Mad. L. T. 254.

———**Local Boards Act (V of 1884)—Duty of maintaining roads—Improvement of tunnels and culverts under the road—Damage to adjacent owners.** An authority to construct a road carries with it the authority to construct the water-ways necessary to enable the road to be carried safely across the drainage of the country, and the same rule applies to roads vested in District Boards Act 1884.

Act V of 1884 enjoins the maintenance of roads vested in it and does not confine the Board to its maintenance as originally designed or executed and in the absence of any such express restriction, the injunction to maintain, imposes the duty to provide such new works as it may be found necessary from time to time to provide in order that the road may be properly maintained. The duty cast upon the District Board of maintaining the road necessarily involves the duty of maintaining the necessary culverts and tunnels under it and of making such improvements in them as may be found essential for the purpose.

Held also that in the absence of proof that the District Board could have constructed a culvert at any other part of the road, which, while effective to protect the road, would have done no injury to the plaintiffs lands, the plaintiffs were not entitled to an injunction.

White O. J. & Miller J.

Aiyasami v. The District Board, 18 M. L. J. 91.

———**Rent Recovery Act, S. 7—Dispensation of putta not to be inferred from mere acceptance of muchilika.** The mere acceptance by the

landlord of a muchilike executed by the tenant is not sufficient proof that the puttah has been dispense with. *Bensan & Munro J. J.*

Naidu Bahadur Zemindar Garu v. Moolupuri Pappaya, 18 Mad.L.J.246

Mahomedan Law—Pre-emption—Ceremonies, due performance of—*Talab i istishal*—Reversed by High Court of decision of First Court on question of fact—Withdrawal from Court by pre-emptors of money paid by purchaser to redeem mortgage on property sold—Waiver of right of pre-emption—The right of pre-emption under Mahomedan law must be exercised, and the claims necessary to give effect to it must be made, with the utmost promptitude; and any unreasonable or unnecessary delay is to be construed as an election not to pre-empt. Whether there has been such delay is a question to be determined upon the facts of each particular case. In this case it was held by the Judicial Committee that the grounds stated by the High Court for overruling the decision of the Subordinate Judge, that the ceremony of *talab i-istishad* had been duly performed without unreasonable delay, were insufficient. Where the pre-emptors had obtained the transfer of a *zurpeshgi* mortgage binding on the property the sale of which gave rise to the suit for pre-emption, and the purchaser after the sale had paid the mortgage money into Court in accordance with the provisions of the Transfer of Property Act for the purpose of redeeming the mortgage:—*Held*, that the withdrawal of the money by the preemptors was not a recognition of the title of the purchaser, but merely of his right to redeem, and was quite consistent with their right to pre-emption. (P. C.)

Bairjnath Ram Goenka v. Ramdhari Chowdhey, 35 Calc. 402.

———**Alienation by remote guardian—Nullity—Purchaser's right to restitution—Guardian also co-heir—Alienation to discharge debts of deceased—Validity of—Held, that (1) under Mahomedan Law there are two classes of guardians, near and remote. The near guardians are the father, grandfather, and their executors. The remote guardians are the male agnates. The near guardians alone have authority to sell the property of a minor in case of necessity but the remote guardians have no such power whatever whether there be necessity or not, and the minor is entitled to treat such a sale as nullity and recover the property sold. The sale being *ab initio* void the purchaser cannot claim any restitution.**

(2) Where, however such guardian is also a co-heir and in possession of the whole estate, he represents the whole body of heirs as against creditors of the estate, and can make a valid alienation for the purpose of discharging the debts of the deceased, the alienations being

made by him *qua*-representative of the estate and not *qua* guardian of the minor,

Aman wd Mahomed v. Varu 1 Sind L. T. R. 221.

———**will—Shias—Power of devise amongst Shias.**—Amongst Muhammadans of the Shia sect a testator can leave a legacy to one of his heirs so long as that legacy does not exceed one-third of his estate, and such a legacy will be valid without the consent of the other heirs. Where, however, the legacy exceeds one third of the estate it will not be valid to any extent unless the consent of the heirs, given after and not before the death of the testator, has been obtained.

Stanley C. J. & Burkitt. J.

Fahmida Khanum v. Jafri Khanum 30 All 153.

———**Wakf—Proof of by user alone—Held,** also that user of a property as wakf is sufficient evidence of its being wakf though there is no direct proof of dedication. *Held,* also that user as wakf does not deprive the owner of his title, but the title remain a subject to the user of the property as wakf.

Held also that where a plot of land is used as a grave yard by a particular community, in general a few members of that community though not in actual possession, can maintain a suit for restraining its alienation and waste, and that sec 42 of the Specific Relief Act (1 of 1877) is no bar to their claim.

Held, further, that persons interested in a wakf property are not estopped from challenging its alienation by reason of their having acquiesced in the alienation of a portion of that property on some previous occasion.

Chatterji & Johnston J. J.

Ilahi Bksh v. The Court of Wards Act, 3 P. W. R. 203.

Malicious prosecution.—Suit for damages—Prosecution started by Police upon information from Defendant—Real prosecutor liable. A private individual upon whose information to the police a prosecution was started cannot escape liability for damages for malicious prosecution by urging that the Police and not he prosecuted, if it appears that he himself was the real prosecutor.

Bhul v. Palun, 12 C. W. N. 818, (1903) followed. Fitz John v. Mackinder, 9 Com. B. Rep. N. S. 515, at p. 533 (1861) referred to.

Madsen C. J. & Doss J.

Hari Charan v. Kailash Chandra, 12 C. W. N. 817,

Marriage.—*Presumption of marriage from cohabitation with habit and repute in Siamese Shan States—Presumption different in different countries—Proof of repute—Entry of "wife" in Consular Certificate of Nationality given to British subjects in Siam—New point taken on appeal.* A domiciled Burman having a residence and a wife in Moulmein went on business to the Siamese Shan States where he lived for many years with the first appellant and did there living her and her son (by him), the second appellant, both of whom claimed a share of his property from his wife in Moulmein who was his administratrix, on the ground that a presumption of marriage arose from the above cohabitation with habit and repute whereby they had acquired the status of a legitimate wife:—

Held, that the habit and repute which alone is effective must be habit and repute of that particular status which in the country in question was lawful marriage. Among English people open co-habitation without marriage is so uncommon that the fact of cohabitation in many classes of society of itself sets up as a matter of fact and a repute of marriage. But that is not the case in countries where customs are different, and where there exists connexions between the sexes not reprobated by opinion but not constituting marriage. *Held*, in the circumstances of, and evidence in, this case, that there was no proof of repute, which required some body of neighbours, or some sort of public nor was there any tangible evidence of the recognition of the first appellant in her quality of wife by people external to the house and independent of it. The only evidence pointing to marriage was the use of the word "wife" by some of the witnesses which showed that they applied it to persons whose status was not matrimonial. A certificate of nationality to a British subject proposing to travel in Siam given to the deceased by the British Consulate was produced in which the first appellant was described as his "wife" and another female relation as his "sister-in-law," as to which it was contended that the first appellant could only be entitled to be so named in it if by marriage she had acquired the deceased's certified nationality:—*Held*, that the certificate was not evidence of repute at all; and any value it might have had was taken away by the insertion of the name of the sister-in-law who on no theory was a British subject. The facts of the existence of the lawful wife in Burma who was ignorant that any such connexion existed between her husband and the first appellant, that polygamy though allowed in Siam was considered disrespectful, and that concubinage was customary, were against any such presumption of marriage. No presumption, therefore, arose that the first appellant had acquired the status of a wife. A contention that the second appellant, even if a valid

marriage was not proved, was entitled by Burmese law to a share in his father's estate, not having been raised in the pleadings nor taken in the Courts below, was not entertained by the Judicial Committee on appeal.

(P. C.)

Ma Wun Di v. Ma Kin, (1907), 35 Calc. 232.

Mesne profits.—Assessment—Zerai land, possession before trespass—Character of—Assessment upon produce—Net produce to be considered, customary and competition rent. The character or possession before trespass should be ascertained because such possession is a fair index of intention as to the mode of occupation if there were no trespass. The character of the land and its use for a long series indicating that the plaintiff if he had been in possession would have used the land for cultivating it himself with ordinary food crops.

Held, that mesne profits should be assessed on the basis of produce and not sent.

If the defendant used the land to suit his own fancy, if he did not use it in the most advantageous way, if he took the risk of cultivating it with indigo on the chance of getting high profits by manufacturing indigo or if he adopted the more comfortable use of the land by writing it to tenants and was satisfied with a comparative small income, the plaintiff ought not to be loser thereby. He must not suffer for the indolent or speculative conduct of a trespasser. The difficulties of ascertaining mesne profits on the basis of produce adverted to.

The net and not the gross produce is the true measure of damages. The resultant net produce after taking into account the costs of production and the risk of the agriculturists differs very little from competition or rack rent. Assuming complete freedom or competition the rent paid by a tenant at will, would practically coincide with the whole net produce of any given price of land.

Customary rents paid by most of the raiyats in a village tends to keep down the rent of Zerai lands.

Mitra & Casperes J. J.

Pundit Luchmi Narayan v. Sheikh Mazhar Hassan, 12 C. W. N. 656.

Mortgage—Colourable transaction—Hindu Law—Widow—Management of estate by her son-in-law—Mortgage on the estate to the son-in-law—Consideration. Where a son-in-law managing a widow's property took a mortgage on it and the consideration was found to be paid out of the income of the estate.

Held, that mortgage being a colourable transaction entered into with a view to saddle the estate with the debt at the expense of the rever-

sioner and to the benefit of the son-in-law, was void, and that the promissory note to the son-in-law ought to be discharged out of the funds of the estate.

Benson & Miller J. J.

Tiruva v. Kuppa, 3 Mad. L. T. 285.

—————*Sub-mortgage—Right to sell mortgaged property—Frame of suit.* In a properly constituted suit a sub-mortgagee is entitled to a decree for the sale of the mortgaged property. The mortgagor in such a suit must be impleaded as also the mortgagees, so that the former may have an opportunity of redeeming and the latter may be able to safe-guard their interests in regard to the claim put forward by the sub-mortgagee, and see that the amount claimed is due.

Stanley C. J. & Karamat Husain J.

Ahmed Ali Khan v. Bilas Rai, 5 A. L. J. 402.

—————*Pror mortgage of whole property—Shares subsequently mortgaged to several persons—Rights of mortgagees, how to be adjusted—Right to redeem—Successive redemption suits by different mortgagees—Res judicata—Civil Procedure Code, S. 13, Expl. II.* A property belonging to A and B was mortgaged to X in 1879. In 1888 A mortgaged his share to Z. Y had redeemed X in 1891. Z first sought to redeem Y in respect of the share mortgaged to himself, but on Y's objection that the whole property should be redeemed, Z's suit was dismissed and he subsequently instituted a suit to redeem the whole property and succeeded. In a suit by Y to redeem Z in respect of the share mortgaged to Y.

Held, that as Z did not accept Y's offer to redeem the whole property, Y was entitled to redeem the share mortgaged to him. (P.C.)

Thakur Jowahir Singh v. Thakur Baldeo Baksh Singh, 12 C.W.N.515.

—————*Equity of redemption purchased by a mortgagee from one of the mortgagors, effect of.* Where a mortgagor died leaving three sons who became equally entitled to the equity of redemption, and one of the sons sold his one third share in the equity of redemption to the plaintiff mortgagee.

Held—That the plaintiff was entitled in a suit to realise his mortgage debt to give credit only for that which his vendor would have been liable to pay, namely, one third of the mortgage debt.

Maclean C. J. & Doss J.

Mutty Lal Pal v. Nandu Lal Neogi, 12 C. W. N. 746.

—————*Decree—Execution—Power of executing court—Transfer of Property Act sec. 89—Adjustment.* The powers of the Court which is

called upon to execute a mortgage decree are not confined within the four corners of the rule framed under section 104 of the Transfer of Property Act.

If an adjustment is pleaded, it raises a question relating to the execution or satisfaction, partial or otherwise, of a decree and the Court must en- a determine how much is due and realizable under the decree at the time execution is sought.

The mortgagor may redeem at any time after the passing of the decree under sec. 89 of the Act before actual sale and the Court has jurisdiction to investigate whether the decree has or has not been adjusted wholly or in part. *Bilijan v. Sachi*, (1904), 31 Calc. 868 followed.

Quære:—Whether sec 258 of the C. P. Code being not mentioned in the Rules framed by the High Court, applies to proceedings in execution of a mortgage decree. *Kedar Nath v. Kali Churn*, (1898) 26 Calc. 703 not followed.

Stephen & Mukarji J. J.

Harish Chandra v. Jagbandhu, 7 C. L. J. 581.

———decree—Sale proceeds in execution of—Balance after payment of instalments overdue—Attachment by money decree holder.—Mortgagee's right for satisfaction of subsequent instalments. The amount due under a mortgage decree was payable by instalments, it being provided that in case of failure of any instalments the mortgagee could execute the whole decree, there was default in payment of the instalments, and the mortgagee instead of applying for execution of the decree for the whole amount remaining due, applied only for the recovery of the overdue instalments, and received the sale proceeds of the mortgaged property which was put to auction. The appellant who held a money decree against the same judgment-debtor applied for execution of his decree against the same judgment-debtor against the balance of the purchase-money remaining unpaid, and got the amount. The mortgagee filed the present suit against him for recovery of the same towards payment of the instalments which became subsequently due.

Held, that the suit was maintainable. The sale having taken place in execution of the mortgage-decree, the property was sold free from the mortgage, and not subject to the amount of instalments which had not accrued due and the plaintiff was therefore entitled to recover the amount.

Lucas & Knight J. C.

Dandumal Wasional Mohandas Sind., L. R. 44.

Negotiable Instruments Act, (XXVI of 1881), S. 7, 32, 58,

64, 115, 134—Bills of exchange drawn on defendant and endorsed over to plaintiff by the banks in whose favour they were drawn.—Failure of defendant to pay—Suits to recover on the bills—Plaintiff's capacity—Holder deriving title from holder in due course—Bills accepted need not be dishonoured and protested—Acceptor liable at maturity—Assent not signed on the bills but on copies—Assent not valid. The plaintiff sued to recover on certain bills drawn on the defendant and endorsed over to the plaintiff by the banks in whose favour they were drawn. The suits were dismissed on the grounds that (1) the suits were defective in form inasmuch as the plaintiff was suing as agent without disclosing his principals and (2) the suits were not competent as the bills had never been dishonoured and protested.

Held that the bills were endorsed over to the plaintiff by the banks in whose favour they were drawn, so that he was a holder deriving title from holders in due course, and as such he was competent to sue under section 53 of the Negotiable Instruments Act (XXVI of 1881).

Held further that the bills were made payable at Bombay. There fore under sections 134 and 32 of the Act the acceptor became liable at the maturity of the bills and the suits were not bad because the bills had not been dishonoured and protested. Section 115 of the Act merely enacts that a bill is not dishonoured until it has been dishonoured by the drawee in case of need where such drawee is named in the bill. Presentment is not necessary to charge the acceptor. The acceptor is the principal debtor and his liability is independent of the presentment.

The acceptance having been signed on the copies of the bills and not upon the bills or upon one of their parts in accordance with section 7 of the Act,

Held, that a material requirement of law had been omitted with the result that there was no valid acceptance. *Jenkins, C. J. & Batchelor, J. Ardeshir Sorabehn v. Khushaldas*. 32 Bom. 247.

Secs. 30, 39, 36—Hundi payable at sight where holder agrees to an arrangement with acceptor for payment—Notice of dishonour—omission to give—Discharge of drawer.—Where the acceptor of a Hundi payable at sight at first accepted the hundi unconditionally, but subsequently said, he would pay in 3 day's time and the holder of the hundi agreed to this arrangement of which however he did not give any notice to the drawer, and where the acceptor having failed to pay the amount of the hundi within the three days the holder did not give the notice of dishonour till after 10 days.

Held—That the conduct of the holder discharged the drawer from his liability under the hundli according to the terms of secs. 30, 39, 86 of the Negotiable Instruments Act.

Rampini & Sharfuddin J. J.

Akaran Baid v. Piya Boralis Par 12 C. W. N. 644.

Notice—*Transfer of property Act Sec. 108 (J)*—Where it was stipulated that a certain notice was to be given two months before 30th of Chaitra.

Held—That a notice dated 1st Falgoon (13th February) was not a valid notice when the 30th Chaitra fell on 12th April, as it was not a full two months' notice but fell short of it by one day. In view of the provisions of Cl. (I) of sec. 108 of the Transfer of Property Act, all lessees including lessees holding under permanent leases are liable for rent even after they have transferred their rights.

Rampini & Sharfuddin J. J.

Bhola Nath v. Raja Durga 12 C. W. N. 724.

Occupancy holding—*Transferability, local usage of*—*Evidence to prove*—*Transferee allowed to hold and pay rent as marfadar*—*Mutation of name on payment of salami*.—Where it was proved by evidence that for 15 or 16 years before suit, occupancy holdings had been transferred in the Terjunnah as also in the village, and the landlords had allowed the transferees to hold possession and pay rent marfatdars and granted them receipts as such, but would not substitute their names in the sheristha unless some payment was made by way of salami or nazar.

Held—That the evidence was insufficient to establish a custom or local usage of transferability of occupancy holdings.

Rampini and Sharfuddin J. J.

Kurani Dassi v. Sajon Kant Singh 12 C. W. N. 539.

—————**Non-Transferable, mortgage of Landlords, purchaser in execution of money decrees if can question the transferability**—**Estoppel**—**Evidence act section 115 if exhaustive**—**Transferability question of**. The landlords of a non-transferable occupancy holding who purchased the holding at a sale held in execution of a money decree, can resist the claim of the mortgagees of the said holding on the ground of its non-transferability without their consent. The English law of mortgage is not applicable such a case.

The law of estoppel in force in India is contained in section 115 of the Evidence Act.

The question of transferability properly arises in such a case.

Rampini and Ryves J. J.

Amatunnessa Khatun Sahiba v. Harandra Lal Biswas. 8 C.L.J. 29.

Parsi—*Muktad trusts are valid trusts—Zoroastrian faith, tenets of—Scheme of the belief of the Zoroastrian faith, explained—Practice—Decision by single judges how far binding on their successors.* Trusts and bequests of lands or money for the purpose of devoting the incomes thereof in perpetuity for the performance of Muktad Baj, Yejuehim and like ceremonies, are valid "charitable" bequests, and as such exempt from the application of the rule of law forbidding perpetuities

The performance of the Muktad ceremonies is a religious duty imposed upon the Zoroastrians by the proved tenets of the religion they profess. The ceremonies themselves are acts of religious worship. They include worship, praise and adoration of the supreme Deity, a thanksgiving for all his mercies. They contain petitions for benefits both temporal and spiritual for all Zoroastrians, for all holy and virtuous men of all other communities—and comprise prayers for the well-being and long reign of the sovereign, for good Government by him, and for victory to him over all his enemies. The Muktad ceremony tends most unmistakably towards the advancement of the religion promulgated by the Persian Prophet Zoroaster, and the performance of these ceremonies is an act of Divine worship in its highest and truest sense.

The monies paid to the priests for the proper performance of these ceremonies is an act of Divine worship in its highest and truest sense.

The monies paid to the priest for the performance of the Muktad ceremonies forms a good portion of their ordinary income. The priests make a higher income during the Furwardigan days than they do during any other period of the year, and the Muktad ceremonies form a sort of endowment which goes a long way to maintain the priests by classes whose existence is necessary to the community of the Zoroastrians. According to the belief prevailing amongst the faithful followers of the Prophet Zoroaster, the performance of the Muktad ceremonies confers public benefits on the Zoroaster community, on the peoples amongst whom they live, and upon the country which they have chosen as their home. The fundamental principle underlying this belief is faith in the efficacy of prayers addressed to the great creator.

A judge sitting on the original side of the High Court is ordinarily bound to follow the judgment of another Judge when the latter has decided a question of law, or laid down certain principles of practice or procedure, or judicially construed any provision of the law prevailing in the country; but the former is not bound to follow the latter's findings of facts based on the evidence recorded by him when the evidence that may be available be-

fore the Judge in a later case may be fuller and more reliable and may tend to lead him to a different conclusion.

Limji N. Banaji v. Bapuji Rustomji, 11 Bom. 481 and *Cawasji v. Rustomji*, 20 Bom. 581 not followed.—*Davur J.*

Jamshed v. Soonabai, 10 Bom. L. R. 417.

Partition—Partial—Cosharers not members of joint family—Suit if maintainable. One of the co-owners of an estate sued the other co-owner for partition of Chowkidari Chakaran lands of one village only of the estate.

Held, that the reasons against the partial partition of joint family property did not apply to such a case and the suit was maintainable.

Rampini & Sharfuddin J. J.

Syed Habibar Rasul v. Aslila Mohan Ghose, 12 C. W. N. 640.

———**Suit for—Party—Co-putnidar and not darputnidar necessary party.** A person holding a permanent interest, though an interest of an inferior grade, may bring a suit for partition, as against persons who hold interests of a superior grade. In a suit for partition by putnidars against darputnidars under his co-putnidars, the co-putnidars must be made parties, but a darputnidar is not a necessary party in a suit for partition; if his putnidar is made a party, and if such a putnidar does not wish to avoid the responsibility which attaches to a party in a partition suit, that is; to say that the partition is carried out in a fair and equitable manner.

Mitra & Caspersz J. J.

Upendra Chandra v. Mahomed Faiz, 7 Cal. L. J. 449.

Partnership—Fraud by co partner.—Hatchitta—Material alteration by a partner to set up exclusive title to debt suit on behalf of firm—Maintainability—Claim, if to be disallowed to the extent of the interest of the fraudulent partner—Apportionment, before dissolution.—A fraud committed by a partner while acting on his own separate account and not as agent for the firm is not imputable to the firm although had he not been connected with the firm he might not have been in a position to commit the fraud.

Where one of the partners of a firm sued to recover a debt which was really due to the firm on the allegation that it was due to himself and not to the firm and his suit was dismissed on the ground that he had materially altered the hatchitta executed by the debtor by striking out the other partners' name without the debtor's consent.

Held—That the other partners were not precluded from suing for the debt on behalf of the firm, making the first mentioned partner a Defendant

in the suit. That is was not open to the Court in such a suit to give them a decree for such portion only of the claim as represented their shares in the firm.

Questions requiring the share of the debt to be allocated to the partners inter se can only be decided when the account of the partnership are taken.

Harington & Holmwood J. J.

Munshi v. Surja 12 C. W. N. 716.

Partnership—Dissolution of partnership—Procedure to be adopted in accounting—Distribution of assets—Right and liabilities of partners in the absence of any contract to the contrary. Held, that, in the absence of any contract to the contrary, the procedure to be adopted in accounting on dissolution of partnership is to distribute the assets of the partnership by paying to each partner his claims in respect of capital standing to his credit at the time of dissolution, the deficiency, if any, is a loss of capital and is to be borne or made good by the partners. *Jadabram* 26 Cal. 281. followed.

Reid J.

Mawraj v. Gokalchand 3 P. W. R. 315.

Possession—Proof. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests, all these matters greatly varying under various conditions are to be taken into account in determining the sufficiency and effectiveness of possession.

Mukerji J.

Merza v. Kunj Behari 7 C. L. J. 414.

Practice—Admission in the Judgment—when a party can question. It is not open to the party to challenge the accuracy of his admission contained in the Judgment, in the Court of appeal. If the admission was not as a matter of fact made, or if it was substantially different from that it was taken by the Court to be, the proper course for the party is to apply for a review of Judgment.

Mukerji & Casperaz. J. J.

Mirza v. Kunj Behari, 7 C. L. J. 414.

———**Pleading—relief not claimed in plaint—plaintiff's failure to prove all facts alleged—whether he can get relief on facts admitted.**—The relief claimed in a plaint must in the first instance be based entirely on facts which the plaintiff can verify as true. A plaintiff who fails to prove all the facts alleged by him, may yet obtain the whole or any part of the relief—claimed by him, if the facts pleaded by the defendant, and found by the Court, show him to be entitled thereto.

Gama v. Lahanoo 4 N. L. R. 86,

———*Setting up inconsistent pleas—Defence of want of genuineness of a deed—Issue upon that basis—Plea of mis-representation undue influence or fraud, not allowed subsequently.*—A genuine document might or might not be binding upon a party; but if the party who has executed it intends to raise the defence that it is not binding he ought either to raise it in his written statement or get an issue framed on it. If a party denies the execution of a document he cannot strictly speaking be allowed to raise the inconsistent defence that the document is not binding upon him. *Mahomed v. Hoesseini* (1888) L. R. 15 I. A. 81 followed.

Where in a suit upon a deed the defence is that the deed is not genuine and upon that issue the parties go to trial, it is not open to the defendant subsequently to rely on misrepresentation, undue influence or fraud as vitiating the deed.

Chandawarkar & Knight J. J.

Prag v. Chandra 10 Bom. L. R. 494.

———*Decree—No specific discretion as to accounts in the decree.*—Court cannot direct accounts to be taken before commissioner when parties have arrived at an agreement after the decree—*Appeal against order of a Judge, when lies.* A decree of the High Court on the original side contemplated on account being taken between the parties but it was silent on the the question as to how that account was to be taken, whether by the commissioner of the Court or by some person selected by both the parties;

The Court of first instance decided that where a direction as to account ought to have been incorporated in a decree when passed it was competent to the Court at any stage of proceedings to direct necessary inquiries or accounts to be made or taken.

Held, on appeal, that as some account was taken under the decree by a person appointed jointly by the parties a new agreement had come into existence superseding the decree and the Court was not competent to make the order appealed against.

An appeal lies against an order of a Judge sitting on the original side if the order decides a question of some right between the parties.

Chandavarkar & Batchelor J. J.

Sir Jehangir v. The Hope Mills Ltd. 10 Bom. L. R. 488.

———*Pleadings—new case in appeal*—It is not open to an appellate Court, to make out a new case for the first time in appeal contrary take pleadings in the first Court.

Chandavarkar & Heaton J. J.

Mulla v. Khatija 10 Bom. L. R. 514.

———*Refusal of Court of first instances to examine all the plain-*

tiff's witnesses—Appeal by defendant decreed—Remand. Owing to the direction of the Court of first instance only a portion of the evidence available in support of the plaintiff's case was recorded by that Court, which decreed the plaintiff's suit, on appeal, however, the lower appellate Court took a different view of the plaintiff's evidence and dismissed the suit. *Held* that the plaintiff should be given an opportunity of producing the evidence which had not been recorded owing to the attitude taken up by the Court of first instance. *Kifat-ullah Mondol v. Sakina Bibi* (11 C. W. N., Notes, p. xcii) and *Kalyani Prasad v. Bishnath* (Weekly Notes, 1905 p. 266) referred to. *Stanley C. J. & Karamat Husain.*

Pabitra Kanwar v. The Maharaja of Benares, A. W. N. 1908, 140.

———*Cross objections—respondent against respondent.*—The respondent has no right to file cross objections against a party who is not an appellant in the case and whose interest is entirely distinct from those of the appellants. *Griffin J. C.*

Sayad Husain v. Bakar Ali 11 O. C. 93.

———*Pleadings—Issue inconsistent.* The determination of a case should be founded upon a case either to be found in the pleadings involved in or consistent with the case thereby made. *Fox C. J. & Hartnoll J.*

Mg Huin v. Salapa 14 Bur. L. R. 65.

———*Ground of appeal not argued—Whether ground can be taken on second appeal.* *Held*, that the fact that a ground taken in first appeal was not argued there does not prevent its being taken on second appeal.

Wallis & Sankaran Nair J. J.

Ramachandra v. Laxmipathaya 3 M. L. T. 293.

Preemption—*Withdrawal of purchase money by vendee does not affect right of appeal.*—A vendee does not forfeit his right of appeal against a decree based on right of pre-emption passed against him by merely withdrawing from Court the purchase money deposited in Court by the pre-emptors.

It is not open to an appellant to question findings of fact arrived at by the lower Appellate Court, when his appeal is heard under section 70 (1) (b) of the Punjab Courts act.

Whether an ostensible mortgage is really a mortgage or a sale is a question of fact. *Roberston and Lalchand J. J.*

Sundardas v. Dhanpatri 9 P. L. R. 325.

——— *Wajibularz—construction Rights of holders of Khalsa and milk.*—The wajibularz of a village provided as follows. The Zamindar of the Khalsa in one person, hence there is no custom of pre-emption in the Khalsa but among the owners of the Khalsa and the milk, the following custom of pre-emption prevails. Held that under the condition of the wajibularz set out above, the Khalsa land was not subject to a claim of pre-emption but that the Mahomedan Law of pre-emption applied and the fact that the property was purchased by a Hindu made no difference.

Stanley C. J. & Karamat Husain J.

Ramlal Bahadur Ali and another 15 A. L. J. 414.

——— *Wajibularly—Sharauk hakiat—Malik—Owner of resumed muafi Preferred over co-sharers in other khata.*—The wajibularz gave a right of pre-emption to sharik hakiat, if any, of the malikans who sold their property. Held, that an owner of resumed muafi (where that was resumed before the preparation of the wajibularly,) was a malik within the meaning of the wajibularz, if he was a co-share in the same khata with the vender and had a sharik of a different khata.

Stanley C. J. and Burkitt J.

Naranprasad v. Munnalal 5 A. L. J. 303 = A. W. N. 1908 P. 142.

——— *Mortgage Property purchased by vendees subject to an unregistered mortgage—Pre-emptors bound to take the property subject to the mortgage*—Property the subject of a suit for pre-emption was purchased by the vendees subject to an unregistered mortgage for Rs. 99. Held, that the pre-emptor must take the property subject to this unregistered mortgage irrespective of the question whether he had notice of it or not.

Stanley C. J. & Burkitt J.

Tejpal v. Girdharilal 30 All 130.

——— *Wajib-ul arz—Construction of documents—Muhammadan law.*—The pre-emptive clauses of a wajib-ul-arz contained the following provision:—"The zamindar of the khalsa and milks the following customs of pre-emption obtains." The khalsa subsequently came to have more owners than one. Held, that no right of pre-emption was given by this wajib-ul-arz to the owners of the khalsa interse, but that a sale of a share in the khalsa was subject to the Muhammadan law of preemption, and this irrespective of the fact that the vendee was a Hindu.

Stanley C. J. & Karamat Husain J.

Ramlal v. Bahadur Ali, A. W. N. 1908, 153.

——— *Sale of land—Pre-emption by a land owner—Vendee owing abadi land not a land owner—Pre-emptor getting help from his friend—*

Bona fide claim.—*Held*, that, the simple fact that a friend of the pre-emptor takes keen personal interest in the matter of litigation and goes even so far as to pay out of his own pocket into Court, the pre-emptive price for, and takes possession of, the property decreed, on the pre-emptor's behalf does not show that he (the pre-emptor) has not sued for his own benefit.

Johnstone & Shah Din J. J.

Sham Sundar v. Sodhi Harbansingh, 3 P. W. R. 283.

Probate—Revocation—Locus standi of co-executor to challenge genuineness of Will. When a probate having been granted in the name of several persons as executors one of them applied for revocation on the ground that the Will was a forgery and that he himself did not apply for probate and was not cited, and that the probate was obtained behind his back.

Held—That he was entitled to have his name struck of as one of the probate, but he had no locus standi to challenge the Will.

Maclean C. J. & Doss J.

Sri Nath Ghose v. Mukundram Chuckerbutty, 12 C. W. N. 574.

Probate and Administration Act (V of 1881), sec. 41—Application fee—Letters of Administration—Bona fides—Discretion of Court to refuse. Where a person made a Will devoting the whole of his estate to an idol and appointing his wives and adopted son as shebaites, executrices and executor, but none of them applied for probate, and the son executor—mortgaged the property as if there was no will.

Held, on an application for probate or letters of administration by the minor sons of the adopted son, (in whom the shebaitship was to be continued under the Will) through their mother as next friend, that they were not entitled to probate as they were not executors.

That the application was not a bona fide one and the Court in its discretion under section 41 of the Probate and Administration would refuse to grant the Letters of Administration prayed for. *Maclean C. J. & Doss J.*

Narendra Kumar Pramanik and Dharendra Kumar Pramanik v. Charuchandra Pramanik and another, 12 C. W. N. 747.

Public Nuisance—Killing of cows by Muhammadans—Custom— Under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom,

and it is only when they abuse the right that its exercise can be interfered with.

Stanley C. J. & Burkitt J.

Shahbaz Khan v. Umrao Puri 30 All 181.

Punjab Municipal Act (XX of 1891) Section 92, 95.—*Municipality—Sanction to erect building—Encroachment on public street.*—Section 92 of the Punjab Municipal Act, 1891, applies primarily to the erection of buildings upon private property. An implied sanction from six weeks of inaction can only affect matters within the purview of section 92 of the act and does not allow an encroachment or projection upon public street without written permission of the Municipality under section of 5, In case of any such encroachment or projection without written permission the Municipality may order demolition of structure on the street, and is not required to proceed by regular suit.

Robertson and Lalchand J. J.

The Municipal Committee of Delhi v. Devi Lahai 9 P. L. R. 331.

Receiver—*When appointment of a receiver is permissible in a testamentary suit. Probate and administration Act V. of 1881, section 55.* Held, that, in a testamentary suit a receiver should not be appointed to take charge of property in the hands of a defendant unless.

- (a) There is a fair probability of the suit succeeding and
- (b) There is an allegation that the Deft. is wasting, or about to waste, the property, or is incapable of managing it, and
- (c) There is some proof of this allegation by affidavit or otherwise.

Johnstone J.

Kesar Devi v. Partap Singh 3 P. W. R. 318.

Registration Act Sec. 17—Security bond—Civil Procedure Code Sec. 545—Transfer of Property Act Sec. 58—order accepting security.—A security bond executed under Sec. 545 Civil Procedure Code pledging property worth more than 100 rupees is invalid unless it is registered under Sec. 17 of the registration act.

The order of the Court accepting such unregistered security bond does not render it valid, but simply amounts to an intimation by the Court that the property given as security is sufficient for the purpose. *Tokhan Singh v. Gurver Singh* 32 Cal. 494 followed.

Benson and Munro J. J.

Sambayya v. Subbayya 3 M. L. J. 317.

Rent Act Oudh S. 126 Special Contract, Meaning of—Tenant of lands in a joint mahal taking a mortgage with possession of a share therein, liability of, to pay rent as tenant to the lambardar.—The plain-

tiff was owner of a 2 annas 8 pies share in a *mahal*. He was also *lambar-dar* of the entire *mahal*. His brother *R.* had a 2 annas 8 pies share and the remaining 10 annas 8 pies share in the *mahal* belonged to other persons who mortgaged it with possession to the plaintiff. The defendant, who was a tenant of 15 plots in the *Mahal*, took a mortgage with possession of *R's* share. This was a suit for recovery of the plaintiff's share of the rent.

Upon the defence that by an arrangement between the plaintiff and *R.* the latter had received the rent of the plots in question and therefore the plaintiffs was not entitled to sue for it, *held*, that there being nothing to show that this was intended to be a permanent arrangement or that the arrangement was intended to continue even if *R.* parted with his share, it did not evidence a "special contract" within the meaning of sec. 126 of the Oudh Rent Act.

Held further, that the defendant did not cease to be a tenant of the plots in question and liable for the rent thereof to the *lambar-dar* by taking a possessory mortgage of the share of *R.*

Chamier J. C.

Jokhusing v. Ram Autar Singh 11 O. C. 75.

———S. 107 H—*Declaration of under proprietary rights and assessment of rent, effect of, from date of order.*—*Held*, that a person declared to be an under-proprietor under S. 107 H, Oudh Rent Act, becomes under-proprietor from the time when the declaration is made and not before.

Held further, that the rent assessed under this section becomes payable only from the date of declaration made in the suit.

Chamier J. C.

Partab Bahadur Singh Raja v. Bairang Bali Sing 11 O. C. 187

Res Judicata—*Debutter estate*—*Representation in suit by person acting under the authority of shebait*—*Res-judicata*—*Identity of subject-matter not essential*—*Judgment in previous suit*—*Admissibility*—*Evidence Act, sec. 13*. A decision obtained on a suit instituted in his own name by a person who was in possession of, and had authority to represent, the debutter estate under an arpannama from the shebait and who in fact did represent the debutter estate, is binding on a succeeding shebait, on the principle of the case of *Prosumno Kumari v. Gopal Chand* L. R. I. A. 135. For the purposes of *res-judicata* it is not essential that the subject-matter of litigation should be identical with the subject-matter of the previous suit.

The scope of the former litigation and the question raised and decided therein must be determined by reference not merely to the decree, but also to the judgment, and if need be, to the pleadings, *Kurrating v. Pearra Saheb*, referred to.

Held—That the previous judgment relied in this case did not operate as res-judicata but was admissible in evidence, if not under sec. 13, Evidence Act, in proof of all the facts found therein, at least to the extent indicated by Geidt J. in *Abinash Chunder v. Parash Nath*.

Stephen & Mookerji J.

Raja Ranjit Singh Bahadur v. Basunta Kumar Ghose, 12 C.W.N. 739.

Revenue Sale Law—(Act XI of 1859), secs. 27, 54—*Title of purchaser, when vests Title, when complete—Sale certificate, evidence of title—Purchaser takes subject to encumbrance—Power of proprietor to deal after default—Mortgage of non-existent property.* Under sec. 27 of the Revenue Sale Law the title automatically vests in the purchaser at the revenue sale by reason of the sale and payment of purchase money. It becomes complete as soon as the sale became final and conclusive even though possession is not obtained. The certificate of sale does not create title. *Tantardhari v. Sundar*, 7 C. L. J. 384, applied.

The purchaser of a share of an estate under section 54 of the Revenue Sale Law takes the share subject to incumbrances which were in existence on the date to which the title relates back (that is, the day after that fixed for the last day of payment) and were in force on the date of the sale.

The power of the proprietor to deal with his property is not lost by reason of the default in payment of revenue, if no sale was held by the Collector on the basis of such default, a mortgage created by the owner after default is not inoperative.

A mortgage of non-existent property, though not inoperative as a conveyance, is operative as in an executory agreement, which attaches to the property, the moment it is acquired and in equity transfers the beneficial interest to the mortgagee, without any new act done by the mortgagor to confirm the mortgage.

Mookerjee & Caspersz J. J.

Khobhari v. Ravi Prasad, 7 C. L. J. 387.

———*Sale under—Setting aside sale—Appropriation of payments by Collector—Contract Act, se. 59, 60.*—A revenue sale was set aside on the ground that there was no arrear inasmuch as the Collector ought to have appropriated the amount sent by the owner to the payment of the January

kist for which the sale was held and not to the following March kist.

Whether secs. 29 60 of the Contrast Act apply to the appropriation of land revenue Act to the Collector discusse. *Madan C. J. & Doss J.*

Jogendra Mohan Sen v. Uma Nath Guta, 12 C. W. N. 646.

Revision—*Small Cause Courts Act, Section 25*—*Revision*—*Powers of High Court—Civil Procedure Code, Sections 108, 622*—*Setting aside ex-parte decree—condition precedent*.—The powers of revision given to the High Court by section 25, Small Cause Court Act are more extensive than those exercised by that court under section 622, Civil Procedure Code.

Karmat Husain J.

Nanhomal v. Harjas 5 A. L. J. 275 = 1908 A. W. N. 141.

———*High Court power of Act X of 1859 Sec 153, Civil Procedure Code (Act XIV of 1882) Sec. 622 Charter Act (24 and 25 Vict. C. 104) Sec. 15 Revision where appeal lies*.—The High Court has power notwithstanding section 13 of Act X of 1859, to revise the orders of lower courts where they have not acted correctly according to law under section 622 of the Civil Procedure Code or under Section 15 of the Charter Act.

Where the application is not merely to set aside the order of a Deputy Collector, but also the appellate order of a Collector the Court an properly interfere under section 622 of the Civil Procedure Code.

Brett & Gupta J. J.

Mohunt Gobinda Ramanuj Das v. Brett and Lakhun Parida. 8

C. L. R. P. 431.

River—*Public navigable river, fishery in arm of the river ceasing to be an arm of a flowing river, effect of*.—When on account of a change in the course of a public navigable river, an arm of the river ceases to be an arm of the flowing river, the person who had a right of fishery in the river ceases to have any right to it; it becomes the property of the adjacent owner

Mr. Harrington and Holmwood J. J.

Ishan Chandradass Sharkar v. Upendra Nath Ghose 12 C. W. N.

P. 559.

Sale-certificate.—*If necessary to be filed in suit for establishment of title by auction purchaser—Decree against landlord, if admissible in evidence against tenant*. A purchaser of immoveable property at an execution sale can establish his title by evidence independently of the sale certificate, a sale-certificate is not the title, but merely the title deed.

A decree obtained by a person claiming to have a proprietary right to certain lands against other persons who set up similar proprietary right to

the same lands, is admissible in evidence against the tenants of the latter who were not parties to the suit in which that decree was obtained and who do claim independently of their landlords.

Mookerjee & Casperz J. J.

Tantardhari v. Sunder 7 C. L. J. 384.

Shibait—Trespass by—Mesne profits, liability of idol for—Shebait's position—Representation of idol. Where a decree for mesne profits, following a previous decree for recovery of possession of immoveable property, passed against one P who was described therein as "Shebait P,"

Held—That the decree should be taken as made against the idol the suit having been defended on behalf of the idol and for its benefit. The position of a shebait of representing an idol discussed.

Maclean C. J. & Doss J.

Raja Permanand Nath Roy v. Shebait Purna Ohunder Roy,
12 C. W. N. 550=7 C. L. J. 514.

Small Cause Court Act Ss. 17 and 25—Application to set aside an *ex parte* decree—Necessity of depositing amount of decree or giving security—Revision.—Held on a construction of section 17 of the Provincial Small Cause Courts Act, that the deposit of the decretal amount or the furnishing of security is a condition precedent to the entertaining of an application to set aside an *ex parte* decree; and if, not with standing the failure to comply with these requirements, the Court entertains and acts upon an application under section 17, such procedure affords good ground for the exercise of the High Court's powers of revision under section 25 of the Act. *Jagan Nath v. Chet Ram* 28 All., 470 followed.

Karamat Husan J.

Nanhemal v. Harjas, A. W. N., 1908, 141=5 A. L. J. 295.

Small Cause Courts Act—Provincial (Act V of 1887) schedule II, clause 8 'Judge of the Small Causes,' meaning of, if it means and includes Munsiff and other Judicial officers vested with Small Cause Court's powers. The expression, "the Judge of Small Causes" in clause (8) of the Second Schedule of the Provincial Small Cause Courts constituted under the Act or of a Court invested with the jurisdiction of a Court of Small Causes.

Where, therefore, the Local Government purporting to act under clause (8) Schedule II of the Provincial Small Cause Courts Act, by a notification in the Official Gazette, invested in general term the Munsiff of places with authority to exercise jurisdiction with respect to suit for the recovery of rent of homestead lands upto a certain value, and empowered

such Munsiffs to try such suits under the Small Cause Court procedure, such Munsiffs if invested with the jurisdiction of a Court of Small Causes, are competent to entertain and try such suits as a Court of Small Causes.

Brett & Doss J. J.

Akshay Kumar Laha v. Hiralal Dosadh, 7 Cal. L. J. 407.

————— **Article 18**—*Suit by heir for recovery of moveable property deposited by owner*—Held, that a suit by a heir for recovery of moveable property or its price against the defendant with whom the owner had deposited it for safe custody is not excepted from the jurisdiction of the Court of Small Causes. Such a claim does not fall within article 18 of the second schedule of the Provincial Small Cause Courts Act.

Shah Din J.

Musammnat Kartar Devi v. Surasti 9 P. L. R. 299.

Specific Relief Act, Ss. 20, 27 (b)—*Specific performance—Sale of immoveable property by registered deed, vendee having notice of a previous agreement to sell made by vendor with another person—Compensation for breach of agreement.* When a person buys immoveable property by a registered conveyance having notice of a previous agreement to sell made by the vendor with another person, the vendee has no right to the property as against that person, and cannot urge in defence to a suit for specific performance of the agreement that his sale deed is registered and that the agreement to sell contains a condition under which the vendor makes himself liable for compensation if possession could not be delivered. Reid J.

Hukam Chand v. Nikka Singh, 9 P. L. R. 297.

Specific Relief Act S. 31—*Rectification of sale-deed upon which plaintiff's title rests*—In a suit for possession the plaintiff's title to the plots in suit rested upon a sale-deed. Those plots did not appear in the deed, but it was said that by mistake other numbers were inserted. Another sale-deed was subsequently executed by the defendant in favour of the plaintiff with the object of rectifying the mistake in the first deed, but the numbers in suit did not appear in the second deed.

Held that, the deed upon which the plaintiff's claim rested, not having been rectified in accordance with the provisions of S. 31 of the Specific Relief Act, the plaintiff's suit was not maintainable.

Kallu, v. Manni 23 All 13 and *Shabi-ud-din, v. Deemoorat Koer* 30 Cal 655 followed.

Griffin J. C

Sajjad Husain v. Bakar Ali 11 O. C. 93.

————— **S. 42.**—*Contract—Suit for money lent—Payment of money, the sole relief prayed for—Decree for possession given by Munsiff—*

consequential relief—Held that where the plaintiff prayed for only one relief i. e. the payment of sums retained by the defendant in breach of a contract and the munsiff gave him a decree for possession the District Judge was wrong in holding that the suit did not lie on the ground that the plaintiff was bound to ask for possession as a consequential relief.

White C. J. & Wallis J.

Kollipara Subbayya v. Kollipara Pitchayya 3 M. L. T. 309.

———**Sec 42—Declaration suit—Possession of Plaintiff—Prof—Custom—succession—Daughter—Collaterals in the seventh degree—Onus probandi—Chohan Rajputs of Kharwan village, Jagadhri Tahsil, Amballa District.**—To a suit for a declaration of title to certain lands it was pleaded that the plaintiffs not being in possession, the suit was barred by the sec. 42 of the Specific Relief Act. Neither party had succeeded on the record to prove possession by affirmation evidence. The lands were held in actual possession by mortgagees and by tenants, and it was not clear whether plaintiff or the defendant had received rents from the tenants. The defendant relied on the mutation entry in her favour, and the plaintiffs on entries in the Girdhawari papers.

Held, that under the circumstances of the case the suit for a declaration was maintainable I. L. R. XV Mad, 307, followed.

Rattigan & Lalchand J. J.

Abdul Karim v. Sahibjan 9 F. L. R. 302.

Stamp Act, s. 36—Instrument, Insufficiently stamped—Admissibility of instrument when not to be questioned—Acknowledgment evidencing a fresh contract—Stamp Act. Held, that an instrument once accepted, rightly or wrongly, in evidence cannot by reason of the special provisions of s. 36 of the stamp Act, be challenged on account of deficiency of stamp duty.

Where an acknowledgment contained the words "and shall be paid," held, that these words evidence a fresh contract furnishing an independent cause of action.

Greaves J. C.

Jawahir Singh v. Lachman Das, 30 C. 195 distinguished. *Humayun Qadr v. Wajid Ali* 11 O. C. 152.

———**S. 40 and 44—Duty and penalty—recovered from person filing documents—suit against Secretary of State, maintainability of.** Certain documents insufficiently stamped were put in evidence by the representatives in interest of executants. The Collector recovered from the persons filing them the duty and penalty by sale of their property.

Held, that the Collector's order was open to review by Revenue

authorities and no suit lay against the secretary of state for refund of penalty realised. Held, further, that the persons, who wish a document to be admitted in evidence, are the persons from whom a Collector can realise the duty and penalty, and if it is due from a third person, they can bring a suit and recover it from him.

Knox & Aikman J. J.

The Secretary of State for India in Council v. Basharat Ulta
5 A. L. J. 262.

Succession Certificate Act (VII of 1889) Section 4—Debt, meaning of—section 90 of the Transfer of Property Act, application under, for money decree—Debt when accrues due—Applicant plaintiff—Execution of decree—Nature of joint family debt if to appear on the face of the bond joint family debt.—In a legal sense a debt is either a liquidated money demand or a liquidated sum due. Section 4 of the succession certificate Act is mandatory. If the matter of non-production of succession certificate is brought to the notice of the Court in time, it is the duty of the Court to stay its hand and to give effect to the clear legislative intent. The amount in respect of which a personal decree under section 90 of the Transfer of Property Act is sought is a debt within the meaning of section 4 of the succession certificate Act. It accrued due on the date for repayment mentioned in the mortgage bond. It is not a case of a succession opening out during the pendency of the proceedings in Court, but a case between plaintiff and defendant.

It is not necessary that the debt claimed should appear on the face of the bond that it is a joint family debt; it is enough, if it is admitted or proved that the family is joint. If the debt is family debt and such a debt has vested by right of survivorship no succession certificate need be produced.

Mookerjee & Caspersz J. J.

Sahade Sukul v. Sakhawat Hossain VII Cal. L. J. 658.

Succession Certificate Act, ss. 19, 3—Appeal from Vizagapatam Agent's order—Madras Act XXIV of 1839, s. 3 rule XI cl. 4—"District Court"—"District Judge. The agent to the Governor in Council at Vizagapatam is the Judge of the Principal Civil Court of original jurisdiction in the Agency, and consequently the Court over which he presides is a District Court within the meaning of sec. 3 of the General Clauses Act.

An appeal lies under S. 19 of the Succession Certificate Act from the order of the Agent.

Wallis & Munro J. J.

Behabalendrani v. Chandrasekara Raja 18 M. L. J. 252.

Suit—Whether a firm can bring.—A firm cannot sue or be sued; only the partners can sue or be sued. Irwin J.

Mutu Raman v. Myat, 14 Bur. L. R. 56.

—**Valuation Act (VII of 1887)—Pre-emption suit—Valuation of suit—Value of land—Consideration for sale exceeding pecuniary limits of jurisdiction of Court—Procedure.** The plaintiff sued for possession of agricultural land. Thirty times of revenue payable on the land did not exceed pecuniary limits of the Court of Munsif, 1st Class, and it was instituted in his Court. The consideration expressed in the sale deed was Rs. 5000 and the Court finding that the price was not fixed in good faith and that the market value was Rs. 4098, gave the plaintiff a decree for possession conditional on payment of that sum.

Held, by the Full Bench that the Munsif being incompetent to pass a decree conditional upon payment of a sum which exceeded pecuniary limits of his jurisdiction, he could have returned the plaint to be presented to Higher Court having jurisdiction to try the suit. (F. B.)

Mahammadafzul Khan v. Nandlal, 9 P. L. R. p. 436.

Tenancy in common.—Ouster—Damages. An assignee of the interest of one of the several co-sharers is entitled to all the rights of the assignor, but if the assignee be ousted from exclusive possession of any part of the undivided share, the assignee cannot recover damages for the same. *White C. J. & Miller J.*

Marri Ramrma v. Ghattamaneni, 18 M. L. J. 259.

Tort—Negligence—Allowing storm—Water to flood another's land. A Municipality constructed a dam in a creek but by allowing a ditch which was connected with the creek and which drained away rain water to be filled up with rubbish of the town and the sluices at the dam to be choked up with weeds, silt, and such other things, the rain water collected in the creek was carried away and flooded the plaintiff's property.

Held, that the Municipality was liable for the misfeasance since it turned their works by negligence into a nuisance.

Borough of Bathurst v. Macpherson, L. R. 4 App. Cas., 256, followed.

Chandavarkar & Knight J. J.

Rajendralal v. Surat City Municipality, 10 Bom. L. R. 498.

Transfer of Property Act, sec. 43—Estoppel—Representation—Transfer or—subsequent acquisition of rights. The rule of law underlying sec. 43 of the Transfer of Property Act is that, as between the transferor

and the transferee, the transferor cannot plead subsequent title to the land transferred, if he had induced the transferee to pay money for the transfer. The principle is an extension of the rule of estoppel.

Where a person who had merely a *ghatwali* interest in certain land, mortgaged it on the representation that it was his *jaigin* and he subsequently got a *mokarari* title to it.

Held, that on a decree for sale upon the mortgage the *mokarari* interest of the mortgagor passed to the mortgagee.

Mitra & Casperez J. J.

Makhoda v. Umesh, 7 C. L. J. 281.

———**S. 43 Mortgage—Decree for sale—Portion of property comprised in a mortgage acquired by mortgagor subsequently to decree.**—The whole of a certain house was mortgaged, the mortgagor having at the time an interest in only a fractional share in it. The Mortgagee sued, and obtained a decree for the sale of the whole house. After that decree was passed and partially executed, the mortgagor in virtue of a partition acquired the remaining interest in the house. *Held* that section 43 of the Transfer of Property Act applied and that the decree holder was competent to continue execution of his decree against the mortgagor's after acquired interest. (*Ajijuddin Sahib v. Sheik Budan Sahib* 18 Mad., 492) followed.

Bannerji J.

Durgadas v. Muhammad Ismail A. W. N. 1908 155.

———**Ss. 43—Transfer of Inam land—inam inalienable-subsequent enfranchisement effect of.**—In the absence of any reservation in a transfer deed, the transfer of the land which is the subject of an inam, involves the transfer of the inam also, whether the inam be regarded as a grant of land or as the remission of the assessment thereon.

If an inalienable inam is transferred and the inam is subsequently enfranchised, the transferee is entitled to claim the land enfranchised by reason of S. 43 of the transfer of Property Act. Any transfer of a village service inam is wholly null and void by reason of Reg. VI of 1831.

Held, also that a statement in the transfer deed that the lands were sold to the vendor amounted to a representation by him that he was entitled to transfer it within the meaning of S. 43, T. P. Act.

White, & Miller J. J.

L. Angannayya Daroor Narasanna 18 Mad L. J. 247.

———**S. 53—Good faith—Transfer not in good faith voidable**

even though with consideration—Single creditor entitled to maintain proceedings to avoid fraudulent transfers.—Held that, even where there is some consideration, the transaction will be avoided under S. 53 of the Transfer of Property Act, if the element of good faith is not present.

Chamier & Greevan J. C.

Narmal Das v. Chet Ram 11 O. C. 197.

———**S. 53—Mortgage—part of consideration fictitious—intention to defeat or delay creditors—False case, setting up of, at a later stage, Effect.** A mortgage purported to secure Rs. 8,500, But it was proved that Rs. 4,853 only of the consideration money had passed. If was, however not shown that the transaction was intended only to defeat or delay the realisation of their dues by certain other creditors, though after the latter had attached the mortgaged properties, the mortgagees instituted a suit for the recovery of the whole amount stated in the mortgage.

Held, That in the circumstances a decree should be passed in favour of the mortgage on the footing of the amount actually advanced that part of the transaction being separable from the rest. The setting up at a later stage of a false case—should not affect rights created by the transaction.

Mitra & Caspersz, J. J.

Rajani Kumar Das v. Gour Kishore Sahaud, L. W. N. 761.

———**Ss. 53—Mortgage—Assignment of fictitious mortgage—Subsequent mortgage for consideration—No. interest passes to the transferee—Rights of assigned as against mortgagor and subsequent mortgagee.**—One made a fictitious mortgage of certain property in favour of H. who transferred the mortgagee rights to his wife in lieu of dower debt. The wife obtained the transfer in good faith and for valuable consideration but without making any inquiry as to her husband's rights M. made a mortgage of the same property to the respondent who sued to enforce it. *Held*, that the transfer of the fictitious mortgage did not pass any interest to the transferee notwithstanding that it was made bonafide and for valuable consideration. The proviso to section 53 was intended to safeguard the rights which had already been acquired. A purchaser for value must be the purchaser of something.

Held, further that as M. had made a fictitious mortgage in favour of H. who thereby defrauded his wife, she could enforce that mortgage against M. and he could not be heard to say that the mortgage was fictitious and colourable, The balance of sale proceeds, if any, after satisfying the plaintiff's mortgage and all prior charges should be applied to payment of the amount of the consideration named in the transfer made

in her favour with interest.

Stanley and Burkitt J. J.

Bastibegam v. Banarsiprasad. 5. A. L. J. 305.

———**S. 59.—Principal—whether includes interest.**—Under section 59, transfer of Property Act, as it stood before the amending Act (No. VI) of 1904 came into force, the value of the right, title or interest in immoveable property created by a mortgage is, for the purposes of section 17 (b), Indian Registration Act, 1877, the principal money secured. The court therefore need not inquire what is the least sum which the mortgagor will be liable to pay under the mortgage. Interest does not become principal for the purposes of this rule merely because it is calculated in advance and made payable along with the actual principal on a fixed date.

Kuar Luxman Rao v. Keshao IV Nag. L. R. 90.

———**Secs 56, 67, 81 and 88.—Mortgage—Subsequent sale of one of the mortgaged lands Bonafide purchaser without notice—whether entitled to marshalling.**—Held by the Full Bench, on the reading together of the two ses 56 and 81 of the Transfer of Property Act, a purchaser of one of the lands comprised in a prior mortgage has no right to have the property marshalled and to insist that the other lands comprised in the mortgage debt be sold and if the plaintiff can not possibly be prejudiced by such sale, it may be open to the Court to direct in the decree itself its sale before the other property.

In execution of a decree for the sale of both parcels of the property. the part not already sold to the purchaser may be sold first, and if the proceeds are sufficient to discharge the mortgage-debt the sale of the remainder may be stopped *Rama v. Subbarayadu* 5. Mad. 337. *Lala Dilawar v. Dewan Balakiram* 11 Cal. 258. *Bhikhart v. Dalip*, 17 All. 435. *Magniram v. Mehdi* 31 Cal. 95; followed. F. B.

Kommineni v. Mangala 3 M. L. T. 287 = 18 M. L. J. 229.

———**S. 81—Decree for sale—“Recover if necessary from the mortgagor”**—*Instruction* A mortgagee obtained a decree to recover his debt by sale of mortgaged property and if necessary from the mortgagor, after selling part of the mortgaged property, the mortgagee sought to sell other property of the mortgagor abandoning his right to proceed against the rest of the mortgaged property, Held that the mortgagee having obtained a decree which he could, execute, the only question for decision by the court executing it is what does that decree direct that the decree must be construed as requiring the decree holder to exhaust

his remedy against the mortgaged property before he can commence proceedings against the mortgagee or his other property, the necessity contemplated by the decree is a necessity of proceeding against other property or the mortgagor personally only if the mortgaged property proves insufficient to realise the amount due.

Miller & Munro J. J.

Manki Kimoji v. Ramamurthy 3 M. L. T. 335.

—————**Sec. 59—"Attest"—Mortgage—Execution.** A mortgage deed is not attested within the meaning of s. 59 of the Transfer of Property Act, if the witnesses are not present of the execution but affix their signatures on the acknowledgment by the mortgagor of the execution of the instrument by him.

The meaning of the word "attested" explained.

The rule is different in the case of wills in India.

Wallis & Sankaran Nair J. J.

Shamu Patter v. Abdul Kadar R. nuthdn, 18 M. L. J. 219.

—————**S. 68—(c)—Mortgage—Construction of document—Power of sale in a usufructuary mortgage**) A mortgage-deed which was primarily usufructuary provided that if the mortgagor failed to deliver possession, or if the mortgagee was dispossessed from the mortgaged premises he might recover the amount of the mortgage debt from the mortgagor and the mortgaged property. *Held* that the mortgagee failing to get possession was competent to sue for and obtain a decree for sale of the mortgaged property.

Stanley C. J. & Burkitt J.

Narpat v. Ram Saran Das, 30 All. 162

—————**Ss. 88, 93—Decree for sale—Time fixed for payment effect of—Payment after time but before completion of sale—Mortgagor's rights—Mortgage decree for sale—No conversion into decree for foreclosure—Interest—Rate of—Mortgage decree, form of.** The mortgagor (judgment-debtor) in a suit for sale on the mortgage is entitled to stop execution by payment of the debt at any time before the completion of the sale. The execution sale is not finally complete until the defendant has had an opportunity of obtaining its rescission under S. 310A, C. P. C.

The mortgagor (judgment-debtor) is under no necessity of showing good cause for not paying within the time fixed in the decree. The ruling in *Vallabha Velia Rajah v. Vedapuratti* should not be extended in its operation to suits for sale against the mortgagor,

Obiter: A sale may under ss. 88 and 92 T. P. A., be ordered in lieu of foreclosure in a suit for foreclosure or redemption, but a decree for sale cannot be converted into one for foreclosure.

The time limit fixed in a decree for sale for payment of the mortgage money is primarily and principally a restriction on the mortgage decree-holder by staying his hands from executing the decree.

A decree for sale under sec. 88 T. P. Act, is a final decree and all subsequent proceedings are proceedings in execution and to them the provisions of the Civil Procedure Code are, so far as they may be applicable, to be applied.

The mortgage bond in the case provided that the mortgage was to take the usufruct, i. e. the annual melwaram for the principal. *Held*, that the mortgagee in possession was entitled only to the Court rate of interest on the principal amount from the date fixed for payment and not to the melwaram of the property under the mortgage. *Miller & Munro J. J.*

Audipuram v. Gopalasamy Mudaly, 18 M. L. J. 259.

—————**S. 90—Application for a personal decree against mortgagor—Limitation—***Held* that the fact that there is no express personal covenant to pay the mortgage money is no bar to the mortgagee obtaining a personal decree under section 90 of the Transfer of Property Act, 1882, against the mortgagor if the requirements of the section are otherwise fulfilled: a personal covenant to pay is implied in and is an essential part of every simple mortgage. *Sawaba Khandapa v. Abaji Jotirav* (11 Bom. 475) not followed. *Unichaman v. Ahmed Kutti Kayi* 21 Mad., 242) referred to.

Held also that on an application under section 90 of the Transfer of Property Act it is the date of filing the suit which has to be looked to in considering the question whether the balance is legally recoverable from the defendant. *Hamid-uddin v. KedarNath* (20 All. 386) followed.

Aikman & Griffin J. J.

JangiSingh v. Chandarmol, A. W. N. 1908, 161.

—————**Ss. 99—Civil Procedure Code, section 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree.**—Even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple money decree he is precluded by section 99 of the Transfer of Property Act, from bringing the mortgaged property to sale in execution of the simple money decree. *Modho Prashad Singh v. Baijnath*, Weekly Notes, 1905, p. 152,

followed. But if such a sale does in fact take place and is confirmed and a certificate is granted to the auction purchaser the sale cannot afterwards be impeached upon the ground that it was in violation of section 99 of the Transfer of Property Act. *Sonu Singh v. Bihari Singh*, 33 Calc 283, dissented from. *Aikman & Karamat Husain J.*

Kishan Lal v. Umrao Singh, 30 All. 146.

———sec. 112, 123.—*Gift of immoveable property—deed registered after the donor's death—Practice—Remand taking of evidence by the District Court permissible.*—A gift of immoveable property duly made by means of a registered deed is not invalid merely because registration of the deed of gift may have taken place after the death of the donor. *Nand Kishore v. Suraj* (1898) I. L. R. 20 All. 392 followed.

It is the invariable practice of the Courts in the mofussil that when a remand involving the taking of fresh evidence is ordered, the District Court sends down the case to the first Court in order that the evidence may be taken there, and this is done in the interests of the parties themselves and for their convenience. But nevertheless the District Court still remains empowered by the order of remand to take what evidence it may see fit to take, and record its findings upon it.

Batchelor & Beaman J. J.

Khushaba v. Chandrabhagabai 10 Bom. L. R. 536.

Trust Act (II of 1882,) Section 34—Public Charitable Trust—Applicability of—Corporation sole—Effect of nominating Collector, etc. as Trustees. Where by a trust deed, dated, dated the 8th of April 1862, C. appointed the Collector of Karachi, the chaplain and the officer Commanding the Troops in Karachi, trustees to administer property bequeathed by him in charity, and the Officers holding the said appointments in 1907 applied under sec. 34 of the Indian Trust Act for permission to sell and convert the immoveable property into cash and invest the same in securities recognized by the Trust Act.

Held, that none but legally recognized persons could be appointed trustees, and the officers mentioned in the trust deed not be corporations sole, the legal effect of appointing them trustees, was to appoint the gentlemen holding the offices at the time the deed came into effect. The gentlemen now holding the offices could at most be treated as constructive trustees to whom section 34 was inapplicable. *Held*, further, that the Trust being a public charitable Trust, it was excluded from the operation of the Indian Trust Act.

Application by Gerald Edward Nicolls and 2 others. 1 Sind L. R. 218

United Provinces Municipalities Act, sec. 17—*Suit against Municipal Board—Misdescription of defendant.* Where a suit is instituted against a Municipal Board, it must be brought in the corporate name of the Board and not in the name of the Chairman. *Bannerji J.*

Santan v. The Chairman, Municipal Board, Allahabad, A. W. N., 1908, 165.

U. P. Land Revenue Act (III of 1901), secs. 56, 86—*Gharghanna whether a cess.* Held, that a tax of half an anna payable to the zemindar by the tenant for occupation of house site and known as gharghanna was not a cess within the meaning of sections 56 or 86 of the Land Revenue Act, and the zemindar could maintain a suit for its recovery. *Burritt J.*

Balwant Singh v. Shankar, 5 A. L. J. 361.

Vendor and Vendee—*Mortgage—Rights and position of Vendee of a share in joint mortgaged property when it is redeemed in part or whole by his money—Amendment of plaint in further appeal.* Held, that, when a Vendee of a share in a joint property already mortgaged by all its owners, redeems whole of it by his own money, he steps into the position of the original mortgagee in respect of the shares of the other co-sharers and acquires a charge thereon, and that the co-sharers have no right to take possession of their shares without paying to the Vendee their quota of the mortgage-money.

Practice: Under the circumstances of this case, plaintiff was allowed to amend his plaint in further appeal. *Chatterji & Johnstone J. J.*

Fazaldin v. Budha, 3 P. W. R. 236.

Wild animals.—*Elephant—Animals feræ naturæ—Right of property—Animus revertendi—Recapture.* When a wild animal has escaped from captivity and pursuit of it has been given up, the property which a man may formerly have had in it ceases, and it becomes open to any one else to reduce the animal to his possession, and when it will, for the time, become his property. An animal which has gone away and may be supposed to be likely to return to a state of captivity, is not a wild animal. Where an elephant, which had apparently been in a state of domestication for a long time, disappeared from the jungle where it regularly grazed but resumed its domestic habits on being recaptured:—

Held, that the elephant was not a "wild animal," and that the property in it never ceased with the original owner.

Stephen & Holmwood J. J.

Mahadar Mohanta v. Balaram Gagoi, 35 Calc., 413.

THE LAWYER.

1st SEPTEMBER 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL)

Account—Settled Accounts—Settlement of accounts by passing a promissory note—No fraud or coercion used—Waving of examination of accounts by plaintiff of his free will—Accounts not to be re-opened. The plaintiff and defendant had mutual dealings and accounts. In settling these accounts, the plaintiff of his own free will and accord and without any fraud practised or undue influence exerted by the defendant waived his right to an examination of the accounts for the purpose of ascertaining the balance due and agreed to treat a gross sum of Rs. 3,556 as due from him and accordingly executed a promissory note for that amount. The plaintiff then sued for a declaration that the promissory note in question was fraudulent and had been obtained from him by undue influence, and was good only to the extent of such sum as might be found due on taking account between the parties. At the trial, the allegations of fraud and undue influence on the part of the defendant and want of free consent on the part of the plaintiff were held not proved.

Held, that on the principle enunciated by the Privy Council in *McKellar v. Wallace*, (1853) 5 Moo. I. A. 372, the promissory note must be treated either as the result of a settled account or as a settlement by compromise. In either case, it could not be re-opened. *Chandavarkar & Knight J. J.*

Magniram v. Laxminarayan, 32 Bom. 353.

Act X of 1859.—Civil Procedure Code (Act XIV of 1882), sec. 373—Applicability of. The provisions of sec. 373 C. P. C. have no application to suits instituted under Act X of 1859.

Where a plaintiff applied to withdraw a suit for rent and the Court permitted such withdrawal but dismissed the suit and did not give distinct permission to bring a fresh suit upon the same cause of action.

Held that a fresh suit was maintainable.

Casperes & Sharfuddin J. J.

Sheikh Golam Mahomed v. Sisendra Pada Banarji, 12 C. W. N. 893.

~~Secs. 160, 161—Appeal heard ex parte—Application for re-hearing—Refusal order if appealable—Applicability of Civil Procedure Code, secs 556, 560 and 588.~~ When an appeal preferred under sec. 100 of Act X of 1859 against an order of a Deputy Collector was heard by the District Judge *ex parte*.

~~Held~~ that under sec. 161 of the Act, secs. 556, 560 and 588 cl. (127) of the Civil Procedure Code applied to the case and an appeal lay to the High Court from an order of the District Judge refusing an application for the re-hearing of the appeal.

Stephen & Mookerjee J. J.

Hari Krishna Mahenti v. Bhusan Chandra Mahenti, 12 C. W. N. 881

Administrator.—*Criminal misappropriation by administrator—No binding—General observation in judgment.* In the absence of an express finding that a person is guilty of criminal misappropriation as to any of the sums for which he and other administrators were held liable, the general observations in the judgment which goes to show that in the opinion of the Judge that the administrators had acted dishonestly are no evidence that as to any particular claim the person was criminally liable.

White C. J. & Wallis J.

Erasala Gurunathan Chetty u. Addippalli Rayasambu Chetty, 3 M. L. T. 394.

Adverse possession.—*Mortgage with conditional sale—Illegal foreclosure proceedings—No adverse possession by mortgagee—No effect of mutation of names.* Held that a mortgagee with conditional sale who has taken foreclosure proceedings in a court having no jurisdiction to entertain them cannot by asserting himself to be purchaser, and getting mutation to that effect in his favor, start a possession adverse to the mortgagor and deprive him of his right to redeem the mortgaged property.

Clerk C. J. & Reid J.

Inder v. Asa Singh, 3 P. W. R. 382.

Agra Tenancy Act, S. 201—Evidence Act, s. 4—Evidence—Presumption—Record of plaintiff's name as a co sharer. Held on a construction of section 201 of the Agra Tenancy Act, 1901, that the words "If in any suit instituted under the provisions of Chapter XI * * * * the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it" mean that, so far as the Revenue Court is concerned, such Court is bound to presume in favour of the plaintiff, and it is for the defendant to establish by suit in the Civil Court that the plaintiff

as no such proprietary right." *Dhanka v. Umrao Singh* (30 All. 58) and *Del Kunwar v. Udui Ram* (29 All. 148) dissented from. The judgment of Richards, J. in *Dhanka v. Umrao Singh* (Weekly Notes, 1907, p. 43) followed. *Banwari Lal v. Niadar* (29 All. 158) explained.

Banerji & Richards J. J.

Bechan Singh v. Karan Singh, A. W. N. 1908, 186.

Appeal—Appellate Court, power of—Alternative relief—Contending defendants—Practice. If in a mortgage suit, in which the plaintiffs ask for relief against two sets of defendants in the alternative the first Court gives a decree against one set of defendants and dismisses the suit as against the other, the Appellate Court has, on appeal by one set of defendants, in which the other set of defendants is made a party respondent, power to alter the decree, so as to make the latter liable, the real contest in the case being between the defendants. *Upendra Lal Mukerjee v. Girindra Nath Mukerjee* 25 Cal. 565, *Hudson v. Basdeo Bappye*, 26 Cal. 169 and *Rupjaun Bibee v. Abdul Kadir Bhuyan*, 31 Cal. 643. followed.

Brett & Dore J. J.

Iswardhari Singh v. Sahebzadi, 35 Cal. 538

Attachment—Provident Fund of Corporation of Calcutta—Subscriptions—Calcutta Funds Act (IX of 1897) ss 2(4) 4, 6—Provident Funds Act (Amendment) Act (IV of 1903) s. 2—"Compulsory deposits"—Trustees. The Provident Fund established by the Municipal Corporation of Calcutta is governed by the provisions of the Provident Funds Act of 1897 and the Provident Funds (amendment) Act of 1903. These Acts render any subscriptions to the Fund in the hands of the Trustee of the Fund not liable to attachment.

Harrington J.

Seth Manna Lal Parruck v. Gainsford, 35 Cal. 641.

Attorneyship.—Examination board of Examiners—discretion of the Mandamus jurisdiction of the Court to interfere—Letters Patent, 1865, cl. 98, 10 Specific Relief Act (1 of 1877) sec 45—Rules of High Court, Nos. 111 to 118 and 132.—Semble, the Court has no jurisdiction [to interfere with the discretion of the Board of Examiners and cannot where there is a discretion imposed on any body, issue a writ of mandamus or compel that body to exercise that discretion in any particular way, but can only compel the exercise of that discretion in a manner fair and candid and unprejudiced and not arbitrary capricious or biased, much less warped by resentment or personal dislike.

Per Woodroffe J.—The Court cannot dispense with the production

of the certificate mentioned in rule No. 116 of the original side of the High Court.

The Court will not interfere with the conscientious exercise by the examiners of the discretion which the Court has confided in them.

Rampini C. J. Brett & Woodroffe J, J.

In the matter of Purna Ohandra (12 C. W. N 873).

Bengal Land Registration Act, (VII of 1876) Ss. 59, 68—Competent Court, meaning of, in s. 59—Jurisdiction—Revision by High Court, power of. The High Court has Jurisdiction under s. 622 of the Civil Procedure Code to revise an order made by a Civil Court under s. 59 of the Land Registration Act (Bengal Act VII of 1876). *Umatul Mehdi v. Kulsum*, 35 Calc. 120, followed. A Court having territorial, but no pecuniary jurisdiction, is not a competent Court within the meaning of s. 59 of the Act. As soon as the certificate is sent to the Collector and he registers the names of the successful persons, the function of the Civil Court terminates and the High Court cannot thereafter interfere in the matter.

Mitra & Casperes J. J.

Rameshwar Singh v. Raghunath Singh, 35 Calc. 571.

Bengal Tenancy Act—secs. 30, 37, 50, 52, 115—Res Judicata—Presumption as to status from uniform payment of rent, after record of rights published—suit for increase of rent for increased area—Civil Procedure Code, sec. 13—Res-Judicata—Where after an entry in the record of rights that the tenant is an occupancy raiyat, the landlord brought a suit for enhancement of rent.

Held. That notwithstanding the provisions of sec. 115 of the Bengal Tenancy Act the tenant was entitled upon proof of uniform payment of rent for 20 years, before the records of rights were framed, to the benefit of the presumption under sub-sec. (2) of sec. 50.

That the word "thereafter" in sec. 115 refers to a period subsequent to publication of the record of rights.

A suit for assessment of additional rent on the same additional area which formed the subject—matter of a previous suit is barred as the decision in the previous suit operatus as judicata.

Doce J.

Maharaja Radha Kishore Manikya Bahadur v. Umed ali (12 C. W. N. 904.)

—————**Sec. 37 cls. (1) and (2).—Non transferable occupancy holding—Abandonment—Notice by landlord if necessary mortgage of**

holding—Sale by mortgagee of constitutes abandonment. Service of notice under cl. (2) of sec. 47 of the Bengal Tenancy Act is not indispensable to effect a legal abandonment and to allow a valid re-entry by the landlord.

The only effect of service of notice under sec. 87 cl. (2) is to make it obligatory upon the tenant to have speedy determination of the question whether there has been an abandonment or not.

Abandonment is the effect of the act of the tenant vacating the holding without making arrangement for payment of his rent as it falls due and for cultivating the land.

Whether there has been abandonment or not in any individual case is a question of intention to be determined upon the facts of the particular case.

When an occupancy raiyat mortgages his non transferable holding and the mortgagee enforces the mortgage has the holding sold, and purchases it himself, the possession of the raiyat completely ceases and there is an abandonment of the holding by him.

Mookerjee & Caspersz J. J.

Ram Pershad Koeri v. Jawahir Roy, 12 C. W. N. 899.

—————**S. 153—Landlord and tenant—Munsif with special power, decision of—Appeal—Suit—Value of suit.** When a Munsif has once been specially empowered to exercise final jurisdiction under s. 153 (b) of the Bengal Tenancy Act:—*Held first*, that it is not necessary that the power should be conferred again on him on his transfer to another district; *second* that no appeal lies from a decision of the Munsif, where the only question decided was whether the relationship of landlord and tenant existed or not and the value of the suit did not exceed fifty rupees. *Held further* that, where the original claim was more than fifty rupees, but it was reduced to below fifty on the case coming on for trial, the claim must be regarded as one for less than fifty rupees.

Maclean C. J. & Coxe, J.

Shilabati Debi v. Roderiques. 35 Cal. 547.

—————**S. 143, 170—Bengal Tenancy Amendment Act (Bengal Act XIV of 1882), s. 310A.** Even before the passing of the Bengal Tenancy Amendment Act of 1907, s. 310A of the Code of Civil Procedure did not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Maclean C. J. & coxe, J.

Asiruddi Mandal v. Mokhada Moyes Dasi, 35 Cal. 543.

Bombay District Municipal Act, (Bom. Act III of 1901), sec. 160—Municipal acquisition of land—Proposal to acquire—Acceptance

of proposal—Difference as to price—Completed contract—The price can be fixed by the Court in cases of difference. The Poona City Municipality having determined to acquire a portion of the plaintiff's house for the purpose of widening a street, the plaintiff expressed his willingness to allow the municipality to acquire the same, but they could not agree as to the price. That question was referred to arbitration as required by sec. 160 of the Bombay District Municipal Act 1901. But the proceedings before the arbitrators were not successful. The plaintiff then applied to the District Judge under sec 160 (3) of the Act requesting him to ascertain and determine the compensation payable. The District Judge made his award. The Municipality appealed from the award contending that they no longer required the plaintiff's premises and that there never was a completed contract with the plaintiff.

Held (1) that there was a contract of sale at a fair valuation, where the Court not only can provide, but under a special statute is compelled, to provide the means of ascertaining the price and of such a contract specific performance would be awardable.

(2) That therefore, there was a contract between the parties from which the Municipality could not resale.

As a general rule where the agreement is that the price of the estate shall be fixed by arbitrators and they do not fix it, there is no contract as the price is of the essence of the contract of the sale, and the Court cannot make a contract where there is none. But the applicability or otherwise of this doctrine depends upon whether the fixing of the price is of the essence of the contract of sale.

Where there is a definite and a completed contract to give and to take the estate upon terms to be settled thereafter, and the valuation cannot be made *modo et forma*, the Court will substitute it self for the arbitrators.

Batchelor & Heaton J. J.

The Poona City Municipality v. Ramchandra G. Karve, 10 Bom. L. R. 617.

Court fee—on plaint Reg. III of 1872 secs. 5, 8—Settlement suit instituted before Settlement officer without Court fee—Transfer to Civil Court—Court fee on plaint if leviable.—No institution Court fee need be paid when a suit which was instituted before a settlement officer under the provisions of Res III of 1872 without Court fee was transferred to a Civil Court under sec. 5 of the Regulation. *Rampini & Surfuddin J. J. J.*

Bibee Solah Kumari Saheba v. Md. Radirudin 12 C. W. N. 917.

———S. 2, 103, 556, 558, 584, 588 (27)—*Order dismissing suit or appeal for default under section 102 or 556 respectively not a 'decree' and not appealable under section 584.* A decision dismissing a suit or appeal for default of plaintiff's or appellant's appearance under section 102 and 556 of the Code of Civil Procedure respectively is not a 'decree' within the meaning of the definition in section 2 of the Code; and such decision in a suit or appeal is not appealable under the general provisions of section 540 or 584 of the Code. *Radha Nath Singh v. Chandi Charan Singh*, (30 Cal., 660), dissented from. *Ablakh v. Bhagirathi*, (9 All., 427), dissented from. The plaintiff or appellant has ample remedies provided in such cases by section 103 and 588, and the Legislature could not have intended that appellants should, in addition have the power of appealing under section 584 of the Code.

White C. J. & Benson J. J.

Dakshinamorthy Pillai v. The Municipal Council of Trichinopoly.
31-Mad., 157.

Civil Procedure Code. S. 13—*Res judicata*—Question of right to receive a recurring payment—Civil and Revenue Courts—Revenue Court deciding a question of title. The Plaintiffs sued to recover their share of an annuity chargeable on a $7\frac{1}{2}$ biswa share of a certain village for the years 1309, 1310 and 1311 Fasli. In a previous suit between the same parties in respect of the years 1306, 1307 and 1308, the plaintiffs' right to receive the annuity had been admitted by the defendant, and a decree passed accordingly which had been affirmed by the High Court.

Held that the fact that the two suits related to different years did not prevent the judgment in the former operating as *res judicata* in the latter. *Chandi Prasad v. Maharaja Mahendra Singh* (24 All., 112) followed. Neither did the fact that the first decision was that of a Court of Revenue make any difference. Either the suit was wrongly brought in a Revenue Court, a defect which was cured by its coming to a Civil Court in appeal or the Revenue Court deciding a question of title might be regarded *quoad hoc* as a Civil Court.

Stanley C. J. & Karamat Husain J.

Dwarka Das v. Akhay Singh, A. W. N. 1908, 192

———S. 13 Expl. II—*Res Judicata*—*Matter which should have been made a ground of defence in previous suit—subject matter if must be identical—Rent suit—Ex parte decree—Plea of payment not raised—claim of set off in subsequent rent—suit.*—In a suit for rent, the defendant claimed a set off for a certain sum which he said he had paid on account of previous arrears of rent—but for which no credit had been given by the plain-

tiff's in a suit for the rent of that period. That suit had been heard *exparte* and decreed in the Plaintiff's favour.

Held—That the plea of payment now raised should have been made a ground of defence in the previous suit and the Defendant was precluded from claiming a set off in regard to it by Expl. II of sec. 13 of the Civil Procedure Code.

Rampini C. J. & Ryves J.

Jamadar Singh v. Serajudin Ahmed Choudhury 12 C. W. N. 862.

———**Ss. 20, 24**—*Two suits in two Courts under different High Courts—High Court—Jurisdiction—Stay of proceedings.* Where two suits between the same parties are pending in two Courts under two different High Courts. *Held*, that the High Court under the conjoint operation of Ss. 20 and 24 of the Code of Civil Procedure can direct proceedings to be stayed in one Court pending trial in the other Court.

Maclean C. J. & Coxe. J.

Venkata Sa Barod v. Maksudan Das, 35 Calc. 541.

———**S. 28**—*"Same matter"—Joinder of defendants.* Plaintiff a minor sued on attaining majority, his guardian the 2nd defendant, impleading defendants, and 3 to 8 as persons in possession of property wrongfully sold to some of them by the guardian the 2nd defendant. *Held*, that the suit was rightly framed and that there was no misjoinder,

Benson & Miller J. J.

Dorasawmy Pillay v. Angvmmal, 18 M. L. J. 265.

———**S. 108**—*Hearing of application under—during pendency of appeal.* Where after preferring an application for setting aside an *exparte* decree under S. 108, C. P. Code, the Defendant preferred an appeal against the decree.

Held, that the first Court had jurisdiction to hear the application during the pendency of the appeal.

Doss J.

Sarat Chandra Dhal v. Damodar Manna, 12 C. W. N. 85.

———**S. 206**—*Limitation for application under S. 206—Revision where the Lower Court declined to correct a clerical error—Civil Procedure Code, S. 622.* *Held*, that no question of limitation arises with regard to action under S. 206, Civil Procedure Code.

Held further that, where the lower Court declined to correct a manifestly clerical error capable of correction under S. 206, Civil Procedure Code, it constituted a failure to exercise jurisdiction which could be interfered with in revision by the High Court.

Gresvan J. C.

Sital Prasad v. Abdur-rashid, 11 O. C. 268,

—————**Ss. 223 248.**—*Practice—Notice—Application for transmission of decree—execution—Court which should issue notice Code of Civil Procedure.*—The notice under sec. 248 of the Code of Civil Procedure may be served by the Court to which the decree is transmitted for execution and not necessarily by the Court which passed it and to which an application is made for transmission under sec. 223 of the Code. The Court has a discretion whether or not it will issue a notice before ordering transmission.

Ordinarily in a case like the present it should be left to the court to which the decree is to be transmitted to issue the notice.

Woodroffe J.

Raja Sreenath Roy v. Romesh Chandra Acharyya Chaudhari (12 C. W. N. 897.

—————**Secs. 232, 649**—*Execution—application for where to be made—"Transfer of jurisdiction" Court which passed the decrees.* The expression "the Court which passed the decree" in sec. 232 C. P. C., includes the Court which by reason of a transfer of jurisdiction has jurisdiction in respect of the subject-matter of the suit.

Sec. 649 C. P. C. should if possible, be so construed as to make it convenient to parties to execute their decrees, the decree-holders as well as the judgment-debtors.

Mittra & Bell J. J.

Udit Narain Chowdhary v. Mathura, 12 C. W. N. 859,

—————**Sec. 237, and 287.**—*Decree-holder putting property to sale without disclosing his lien, effect of—Purchaser without notice, liability for the undisclosed lien.* Held, that decree-holder who has caused the property of his judgment-debtor to be sold in execution cannot afterwards set up any claim of his own against that property unless he shows that the purchaser purchased with notice of it.

Evans J. C.

Baldeo v. Ausan Singh 11 O. C. 206.

—————**S. 244.**—*Auction purchaser not a representative of decree-holder when the question is the right of such purchaser to possession against judgment-debtor.* The purchaser at an auction sale, held in execution of a decree, is not the representative of the decree holder, when the question to be decided is the right of such auction purchaser to possession as against the judgment-debtor. S. 244 of the Code of Civil Procedure is no bar to a separate suit by the auction purchaser for possession of the purchased property from the judgment debtor. *Kishori Mohun Roy Chowdry v. Chunder Nath*, 14 Cal. 644, followed. *Manickka Odayan v. Rajagopala Pillai*, 30 Mad. 507 doubted. *Sandhu Taragnar v. Hussain Sahib*, 28 Mad. 87, considered. *Obiter*:—The purchaser from a decree-holder is but

the purchaser at Court sale is not, a representative of the decree-holder for the purposes of S. 244'

White C. J. & Miller J.

Krishna Satapasti v. Sarasvatula Sambasiva Ram 31 Mad., 177.

———**Sections 244, 250.**—*Payment twice over—suit for recovery of that amount maintainable.*—Sections 244 and 250 of the Code of Civil Procedure do not preclude the institution of a suit by a judgement debtor for recovery of money, which he has paid to the decree holder privately and the payment of which not being certified could not be recognised and for which the decree holder had taken out execution over again.

Stanley C. J. & Banerji J.

Gendo v. Nehal Kunwar 5 A. L. J. 475.

———**Sec. 266**—*Right to get profit in future years—Attachment.* The decree-holder applied for attachment of profits then due to their judgment debtor from the lambardar as well as profits which would accrue at a failure date.

Held that in the profits of future harvest the judgment-debtor had only a possible right to get a share, and this possible right was not liable to attachment having regard to the provisions of section 266 of the Code of Civil Procedure.

Aickman & Karmat Husain J. J.

Sher Shing v. Shri Ram (5 A. L. J. 10).

———**Sec. 266.**—*Mortgagees not advancing the whole amount—Balance whether a debt attachment suit by purchaser—cause of action.*—The unpaid balance of a loan does not constitute a debt due by a mortgagee to a mortgagor and an not be attached as such in execution of simple money decree against the mortgagor. The purchaser of such a debt has no cause of action to bring a suit against the mortgagees.

Stanley C. J. & Burkitt J.

Phulchand v. Chandmal (5 A. L. J. 491.

———**Sect. 373.**—*Withdrawal of suit—Withdrawal in appeal—Change in substantive law during progress of a suit—Law applicable to the suit—Dakhan Agriculturist's Relief Act Secs. 12, 13.*—Early in 1905 a redemption suit was filed in the Subordinate Judge's Court at Thana. The Dakkan Agriculturist's Relief Act was extended to the District in August 1905. At the trial, the subordinate Judge took the account of the mortgage upon the footing of the application of Ss. 12 and 13 of the Act and gave the plaintiff the benefit of those pro-

visions. There was an appeal, and whilst it was pending the case of *Fat-mabibi v. Ganesh* (1) was decided. The plaintiff then seeing that by reason of the above ruling the defendant's appeal was likely to succeed applied to the Court for leave under sec. 373 of the Code of Civil Procedure to withdraw the suit with liberty to file a fresh suit to obtain the benefit of Ss. 12 and 13 of the Act. This was allowed.

Held (1) that the Judge in permitting the plaintiff in the stage of appeal to withdraw the suit with liberty to file a fresh suit under s. 373 of the Civil Procedure Code and thus get the benefit of an alternation in the substantive law, acted without jurisdiction.

Held (2) that the suit should have been tried upon the footing that the *Dakkan Agriculturist's Relief Act* had no application between the parties.

Where the law is altered when a suit is pending the law which existed when the suit was commenced must decide the rights of the parties.

Scott C. J. & Knight J.

Prabhakar Kashinath v. Khandserao Antagirao 10 Bom. L. R. 625)

—————S. 375—*Matters outside the scope of suit*—The question whether any particular term of a petition of compromise incorporated in a compromise decree relates to the suit or is covered by the subject-matter must be decided from the frame of the suit, the relief claimed and the relief allowed by the decree and adjustment by lawful agreement. The mutual connection of the different parts of the relief granted by a consent decree is an important element for consideration in each case in deciding whether any portion of the relief is within the scope of the suit. No harm and fast rule can be laid down and each case must be governed by its facts.

Mitra & Casperez, J. J.

Gobinda Chandra Paul v. Dwarka Nath Paul (12 C. W. N. 850).

—————S. 461—*Joint Mitakshara family—Minor—Next friend—Minor's money in Court—Managing member of Mitakshara family—Withdrawal of money from Court.* The managing member of a joint Hindu family governed by the Mitakshara school who is also appointed guardian *ad litem* of his minor brother for the purpose of a rent suit, in which both the brothers obtained a decree for arrears of rent against their tenant, is exempt from the restrictions imposed by s. 461 of the Civil Procedure Code.

Mittra & Casperez J. J.

Harihar Pershad Singh v. Mathura Lal, 35 Cal, 561.

—————Ss 503 (f) 588 (24)—*Receiver—Receiver's accounts—Direc-*

tions as to, if appealable—Directions given by a Court in passing receiver's accounts are not appealable.

Rampini & Sharfudin J. J.

Keshobati Kumari v. MacGrigor, (35 Cal. 568).

———**S. 522.—Appeal—Arbitration—Finality of decree passed in,—accordance with award—Disposal of objections to the validity of award by 1st Court,—appeal to the privy Council against the decree of Governor General's Agent in Bhopal, Native State—Special leave to appeal—Held that when objections to the validity of an award by arbitration have been disposed of, whether rightly or wrongly by the Court of 1st instance and a decree in accordance therewith has been passed, the decree becomes final and is not open to appeal on the strength of those objections.**

Quere.—Whether a decree by the Agent to the Governor General, Central India, lies to the Privy Council.

Hansraj v. Sundarlal (3 P. W. R. 337)=35 Cal. 646.

———**S. 557—Appeal, when to be dismissed for default—Talabana not paid within the time ordered.**—An appeal should not be dismissed for default before the date fixed for the hearing of the appeal arrives, simply because the appellant has failed to explain satisfactorily, why the *Talabana* was not deposited within the period fixed by the Court and without ascertaining whether there was ample time after the deposit to serve the notices upon the respondents.

Brett & Dass J. J.

Chandra Nath Dass v. Kaliprasanna Chakrarti, (35 Cal. 535.)

———**Secs. 562, 588 (28)—Remand—Appeal from order of remand filed after decision of suit in accordance therewith.** Held that the fact that the suit has been decided by the Court of first instance in compliance with an order of remand made under section 562 of the Code of Civil Procedure is no bar to the filing of an appeal from the order of remand or to the hearing of such an appeal. *Babu Lall v. Ram Kalli*, Weekly Notes, 1236, p. 28 followed *Salig Ram v. Brij Bilas*, 659 overruled. *Madhu Sudan Sen v Kamini Kanta Sen*, 1023, dissented from.

F. B.

Uman Kunwari v. Jabrandhan, A. W. N., 1908, 125.=5 A. L. J. 447.

———**Sec. 562—Remand. Preliminary point what is Liability for compensation—amount of damages.**—Where by reason of the decision on one or more of the issues recorded in the case there has been no necessity for the consideration of the other issues, the suit was dismissed on a preliminary point. The appellate court finding that the issues consi-

dered were wrongly decided and the suit wrongly dismissed remanded the case for the disposal of the suit after consideration of the remaining issues. Held the suit was properly remanded under section 562.

There were two questions in the case viz, the liability of the defendant to compensate the plaintiffs, and the amount of damages. The court of first instance held that the plaintiffs were not entitled to damages and dismissed the suit on this preliminary point, on appeal the court of appeal held that the plaintiff was entitled to damages and remanded the suit for ascertaining of damages.

Held the remand was proper.

Coxe, & Does J. J.

Salim Sheikh v. Nagir Khan 8 C. L. J. 159.

———**Sec. 574—Judgment if proper—No reasons.** The lower appellate Court in its judgment, recited the pleadings as well as the findings of the 1st Court, and added—"Defendants appeal against this decree on many grounds including a plea that if they are turned out from here, they will have nowhere to go and live. The only questionable part of the township Judge's decision seems to me to be the finding that appellants' possession was adverse. With the rest I am in complete agreement and I dismiss this Appeal with costs."

Held that this was not a sufficient compliance with the express provisions of section 574 of the Civil Procedure Code which lays down that the judgment of the Appellate Court shall state (a) the points for determination (b) the decision thereupon (c) the reasons for the decision.

Hartnoll J.

Maung Kyaw Gan Hla Ma Fan v. Maung San, 14 Bur. L. R. 156.

———**Sec. 584—Second appeal—Custom—Question of law—Insufficient or illegal evidence.** Held that where a question arises as to the existence or non-existence of a particular custom, where the lower Appellate Court has acted upon illegal evidence, or on evidence which was legally insufficient to establish an alleged custom, the question is one of law.

Stanley C. J. & Burkitt & Aikman J. J.

Ram Bilas v. Lal Bahadur, 5 A. L. J. 456.

———**Sec. 586—Small Causes Suit—Character of the Suit—Second appeal—Framing issues—Exact words of the Legislature relating to issues—Contract Act sec. 231—Agent—Undisclosed principal—"Disclose himself"—Strict construction.**—In determining whether no second appeal lies under the provisions of section 586 of the Civil Procedure Code the

original character of the suit is to be regarded rather than the character it may subsequently assume by operation of the findings of the Court.

Ramchandra Gopal v. Sadashiv Narayan (1885 P. J. p. 9) followed.

Jenkins C. J. & Bachelor J.

Lakshmandas v. Anna 32 Bom. 356.

———**Sec. 595—Appeal to Privy Council—Leave to appeal—Final decree—Bengal Tenancy Act (VIII of 1885) s. 187—Remand—order, when can be regarded a final decree.** Where the cardinal point in a suit was, whether notice under 167 of the Bengal Tenancy Act to annul certain encumbrances was properly served or not, an order of the High Court holding that the notice had been properly served and remanding the case to be tried out on the other issues is a final decree and an appeal from the decree to the Privy Council would lie.

Ananda Gopal Gossain v. Nafar Chandra Chowdhury, 35 Cal. 18.

Contract.—Puttas, Contract of Insurance illegal—Specific performance. Where the plaintiff promised to effect an assurance and assign the puttas to the defendant on his paying Rs. 160.

Held that there is nothing illegal in the contract to assign the puttas and even if the original contract of insurance is illegal, it is not open to the defendant to set it up.

Sankaran Nair J.

Narigiri Veerasalingam v. Seethapathy Sathiragoo, 3 M. L. 393.

———**Act ss. 15, 16—Coercion—Undue influence—Mortgage deed executed by a judgment debtor while under arrest in execution of a decree—Compromise—Civil Procedure Code, section 375—Practice—Appeal trusted as Revision—Punjab Courts Act XVIII of 1884, secs. 40 and 70 (a) and (b)—***Held* that a further appeal is not competent when the decree of the 1st Court has been set aside or varied in a suit for possession of land, having jama below Rs. 250 on the strength of a mortgage for above that sum when no question as to the amount of mortgage money due has arisen.

Held also that a deed is not void for coercion or undue influence simply because it has been executed by a judgment-debtor while under arrest in execution of a decree against him or by one who had just been released therefrom at the time of executing it.

Held further that the Court is bound to decide the case according to the compromise duly made, and certified to the Court, by the parties.

Chatterji J.

Mool Chand v. Inam Bakhsh, 3 P. W. R., 342.

———**Sec. 23.**—*Contract to money to a father in consideration of his giving his daughter in marriage.—Whether immoral or opposed to public policy.*—Held by the Full Bench that a contract to make a payment to a father in consideration of his giving his daughter in marriage is immoral and opposed to public policy within the meaning of sec. 23 of the Indian Contract Act.

White, Miller & Munro J. J.

Kalvanguntha Venkata Kristnayya v. Kalvanguntha Lakshmi Narayana (4 M. L. T. 1).

———**S. 54.**—*Hundi—consideration proved different from consideration stated in the Hundi—Maintainability on Hundi.*—The plaintiff sued on a Hundi was found to be given on consideration of execution by plaintiff of a mortgage.

Held that S. 54 of the Contract Act required the Court to dismiss the plaintiff's suit, and the Court had no right to give a decree for money due on a different consideration to that stated in the Hundi.

Beddam J.

Sami Aiya Thevan v. Bengaiyingar (3 M. L. T. 405).

———**sec. 231.**—*Agent—Undisclosed principal—"Discloses himself"*—*Strict construction.*—Section 231 of the Contract Act deals with the rights (a) of the principal and (b) of the third party in cases where the contract is entered into by the agent without disclosing the principal. The first clause refers to the general case and the rule is that the third party shall have as against the undisclosed principal the same rights which he would have against the agent if the agent had been the principal. The second clause deals with the particular case where the principal discloses himself before the contract is completed. The second clause should be read as governed by the first clause.

———**S. 264.**—*Notice—Dissolution of partnership, Sub-partnership and Shikmi Sharik or dormant partner defined—Liability of Shikmi Sharik.*—Held that the term of Shikmi Sharik (dormant partner) by its etymological sence means a partner whose name is not disclosed and the phrase sub-partnership means partnership within a partnership.

Held also that the liability of a dormant or undisclosed partner ceases on the retirement notwithstanding no notice is given especially when it was net known to the customers that he was a partner, but at the same time he remains liable for all debts and obligations incurred by the partnership upto the date of his retirement.

Kensington & Lalchand J. J.

Hashmat Ali v. Lachhmi Narain (3 P. W. R. 410).

Construction of deeds.—*Deeds executed in the mofussil*—*Liberal construction—charge—Intention to make land security for payment of debt*—*Transfer of Property Act Sec. 100.*—Documents executed in the mofussil come within the statement of the Privy Council in Hanooman Parsad Panday v. Mussulat Babooee Munraj that deeds and contracts of the people of India ought to be liberally construed. The form, expression is not to be so much regarded as the real meaning of the parties which the transaction discloses.

Where having regard to all the circumstances of a transaction, there remains no doubt that a document is sufficient and does not show an intention to make the land security for the payment of the money mentioned therein, the document does create a charge.

Jenkins C. J. & Batchelor J.

Janardana Vishnu v. Anant Laxmanshet (10 Bom. L R 575)

The words "discloses himself" in section 231 of the Contract Act should be construed strictly.

Per Batchelor J.—It has been, warmly urged that the third party's right to repudiate, which is allowed if the principal himself makes the disclosure, should not be refused merely because the disclosure is made by some other person or the information reaches him from some other source. But the argument to my mind is not convincing. For whatever may be the subjective belief or conviction of the third party, it is conceivable that he should have no right to avoid the contract unless the principal, hitherto undisclosed, comes out into the open and claims the benefit of the contract for himself, and there would be no hardship in requiring the third party to challenge the alleged principal as to whether he makes this claim or not.

Jenkins C. J. & Batchelor J.

Lakshmandas v. Anna 32 Bom. 356.

Dekkhan Agriculturist's Relief Act. (XVII of 1879) sec. 20.—*Decrees—Execution—Courts' power to grant instalments—Civil Procedure Code (Act XIV of 1882) Sec. 13 Resjudicata.*—A Court has power in execution proceedings to grant instalments in the payment of a decretal debt under S. 20 of the Dekkan agriculturist's Relief Act 1879 even where the instalments, are refused at the time of passing of the decree.

Jenkins C J. & Batchelor J.

Bai Diwali & Girdhar Govindram Patel (10 Bom. L. R. 577).

—————**Evidence.**—*Thakbust and Revenue Survey maps, evidentiary*

value of—*Statement recorded in the presence of parties, effect of.*—In a dispute, whether certain land belonged to the estate of the plaintiff or to that of the defendant, the plaintiff produced *Thakbust* as also survey maps of the year 1852–53; *Thakbust* map contained a statement, which supported the plaintiff's case. The predecessor of the appellant defendant had full notice of the the *Thak* proceedings, and he objected to the boundary lines as laid between his and the plaintiff's estate; the objection was disallowed. The defendant produced a survey map of 1855–56 of the district, which contained his estate, in support of his case, but he did not produce any *Thakbust* map of the same year, and there was no evidence, to support the accuracy of the survey map:—*Held.* that the evidentiary value of the *Thakbust* map, and the survey map produced by the plaintiff, was greater than that of the survey map produced on behalf of the defendant.

Mitra & Caspeasy J. J.

Dunne v. Dharam Kant. 35 Cal. 621.

Evidence Act S, 91.—*Proof of original consideration.*—Where the promissory note is the record of the loan transaction section 91 of the Evidence Act debars the plaintiff from resorting to the original consideration.

Shaw C, J.

(*Ngu Chet* 14 Bur. L. R. 179).

Execution of decree—*Refund of money realized in execution of a decree afterwards reversed in appeal*—*Limitation*—*Execution of decree stayed by injunction*—*Procedure.* On the 7th October 1901 an *ex parte* decree on a mortgage was passed in favour of the appellants. Before however, the decree was made the appellants had obtained an injunction restraining the respondents from realizing certain monies deposited in Court to their credit. After this decree was passed, the appellants withdrew out of this amount Rs. 19, 041. The decree was set aside on the 9th July 1904. The suit was retried; and on the 17th September 1904 the the Court of first instance made a decree in favour of plaintiffs for Rs. 17,711-7-0. This decree was affirmed by the High Court on the 18th December 1906. On the 17th September 1907, the respondents applied for a refund of the difference (Rs. 1,804) between the sum realized by the plaintiff and the sum finally decreed.

Held (1) that the plaintiffs were at liberty to proceed either by application or by suit. (2) that the application was not barred by limitation.

Bannerji & Richards J. J.

Bithal Das v. Jamna Prasad, A. W. N., 1908, 206.

Execution of decree.—*Appropriation of debt due to two persons*

towards a debt due against one of them alone—Amendment of plaint.
Held that, in execution of a decree obtained against one person alone, a decree-holder is not entitled to have a debt due to that person and another jointly realised and applied towards the discharge of his decree.

Where a plaintiff sued on a promissory note in favour of himself and others who were added as defendants, on the plea that he alone was not entitled to the amount claimed, the plaintiff was allowed to amend his plaint so as to claim jointly for himself and the added defendants.

Chamier J. C.

Bijai Bahadur Singh v. Jang Bahadur Singh, 11 O. C. 225.

General Clauses Act (I of 1904), sec. 7—*Repeal of the Mamlatdars' Courts Act (Bom. Act III of 1876), by the Mamlatdars' Courts Act (Bom. Act II of 1906)—Suit commenced under the former Act—Effect of the latter Act.*—To disturb an existing right of appeal is not a mere alteration of procedure.

Jenkins C. & batchelor J.

Nava v. Sheka, 32 Bom.

Hindu Law—*Alienation by Hindu widow—consent of female reversioner if passes absolute.—Propriety of transaction—Presumption of law.*—An alienation of her husband's estate by a Hindu widow without legal necessity but with the consent of the next reversioners who if they had succeeded to the estate would themselves have been entitled to the limited estate of a Hindu widow does not pass an absolute estate to the transferee.

No presumption of the propriety of the transaction arises from such consent.

Maclean C. J. & Doss J.

Bepin Behari Kundu v. Durga Churn Bandopadhyaya (12 O. W. N. 914).

—**Debts—Son's liability for father's debts—Son liable for father's misappropriation when such misappropriation amounts only to a breach of civil duty.** Where an undivided Hindu father misappropriates money received by him for the purpose of being paid to others in the course of a transaction entered into by him for the benefit of the family, and under circumstances which constitute such misappropriation a mere breach of civil duty and not a criminal act, the undivided son's interest in the joint family property is liable for the repayment of the monies so misappropriated to the person entitled to be paid *McDowell & Co., v. Ragava Chetty*, 27 Mad., 71), distinguished.

White C. J. & Benson J.

Kanamar Venkappayya v. Krishna Chariya 31 Mad., 161.

Hindu Law—Son's liability to pay father's debt—Decree for damages resulting from a wrongful act committed by the father—Ancestral estate in the hands of the son not liable under the decree. The plaintiff obtained a decree against the defendant's father for damages to the plaintiff's property caused by a dam erected by the latter which obstructed the passage of water thereto. On the latter's death the decree was sought to be enforced against his son with respect to the ancestral estate in the hands of the son.

Held, that the son was not liable under Hindu Law under the decree. His father's act in obstructing the passage of water to the decree-holder's lands may not have been illegal in the usual sense of the term, that is to say, it may not have been committed in contravention of any express provision of the law: but the result of the suit showed that it was wrongful, and for a liability so incurred the son could not be held answerable when the estate that had come to his hands had derived no benefit from the act.

Under Hindu Law, the son is not to be held liable for debts which the father ought not, as a decent and respectable man, to have incurred. He is answerable for the debts legitimately incurred by his father, not for those attributable to his failings, follies or caprices.

Chandavarkar & Knight J. J.

Durbar Mhachar v. Khachar Harsur, 32 Bom. 349.

—————**Gift—Possession not necessary—What amounts to possession when donor and donee are together in the gifted house.** *Held*, that according to Hindu Law giving of actual and exclusive possession is not necessary to the completion of gift. Moreover where donor and donee are living together in the gifted house at the time of execution and registration of the deed of gift and the former gives the latter power to receive the deed after registration from the Registrar's office, the very act of execution of the deed amounts to giving possession and that it is neither necessary that donor should vacate the house in order to leave the donee in exclusive occupation nor that he should before witnesses announce transfer of possession.

Chatterji & Johnstone J. J.

Ram Charandas v. Bhagwati, 3 P. W. R. 349.

—————**Joint Hindu family—Liability of other members of family for managing member's debts.** R. R., a member with G. L., his uncle, of a joint Hindu family, got a decree for costs against G. L., and had him arrested in execution thereof. G. L. thereupon borrowed money on a mortgage of joint family property and procured his release. *Held* on suit by

the mortgagee for sale of the mortgaged property that the mortgagee could not under the circumstances proceed against R. R.'s interest in the joint family property. *Dulip Singh v. Sri Kishen Pande*, N. W. P., H. C. Rep. 1872, 83, distinguished. *Stanley C. J. & Banerji J.*

Ram Ratan v. Lachman Das, A. W. N., 1908, 192.

———*Reversioners' suit for declaration—Limitation—suit barred against Some barred against all—No fresh cause of action on the birth of each new member—Estate of daughter's son's in grandfather's property.* Art. 120 is the article applicable to a suit by the reversioners for a declaration that the alienations made by a Hindu widow are not binding on them, and in the case of several reversioners, the suit will be barred against all if it is barred against one of them. A fresh cause of action and a fresh starting point of limitation could not arise on the birth of each new member of the family. *Chiruvolu Punnamma v. Chiruvolu Pirrasu*, referred, to.

Obiter :—Daughter's sons of the last male holder, who are members of joint Hindu family, take the estate of the maternal grandfather with right of survivorship. *Benson & Miller J. J.*

Krishnier v. Lakshmiammal, 8 M. L. T. 275.

———*Succession—Dayabhaga — Succession certificate—Sister's daughter—Sister's daughter's son—Spiritual efficacy the criterion of inheritance—Succession Certificate Act, S. 6.* Where the daughter of the sister of a deceased Hindu governed by the Dayabhaga School and her son applied under the Succession Certificate Act for a certificate to collect the debts due to the estate of the deceased.

Held (without expressing a final opinion) that competency to offer funeral oblations being the principal ground for succession under the Dayabhaga law, *prima facie* a sister's daughter and a sister's daughter's son are not heirs, and as such are not entitled to have the certificate.

Maclean C. J. & Doss J.

Krishna Pada Dutt v. Secretary of State for India, 35 Cal. 631.

———*Reversioners—When sale by limited owner for purposes binding on the reversion, sale not to be set aside unless purchase money refunded—Right of presumptive reversioner to set aside such sale—Widow not trustee for reversioners.* Where a Hindu widow, with a limited interest in property, sells the property under circumstances which render the purchase binding on the reversion, the actual reversioner after her death or the presumptive reversioner during her lifetime, cannot have the sale set

aside without refunding the purchase money.

Obiter, a suit to set aside such sale will be liable to be dismissed if the plaintiff does not contain an offer to refund. Where a presumptive reversioner sues to set aside such a sale during the lifetime of the widow without offering to refund the purchase money, it is not competent to the Court to pass a decree that, upon the widow's death, the sale should be set aside on the person then entitled to the reversion refunding the purchase money. *Phool Chund Lall v. Raghubans Suhayee*, 9 W. R. 109 followed.

A widow is not a trustee for the reversioner, and, in the absence of other ways of paying off debts binding on the property, is not bound to raise money on her personal security to discharge such debts, neither is she bound to mortgage the property for that purpose, if such a course would be more prejudicial to her than a sale.

Boddam & Sankaran Nair J. J.

Singam Setti Sanjivi Kondaya v. Draupadi Bayamma, 31 Mad., 153.

—————*Succession—Gift to widow of Dharmakartaship—Gift by widow—Next reversioner passing out of the family by adoption.* In a dispute as to succession between the daughter's daughter of the deceased and his father's sister's adopted son.

Held that the property not being stridhan the adopted son of the father's sister being male or regular bandhu was entitled to it by virtue of his sex in preference to any female reversioners even though the latter may be nearer in degree.

Benson & Miller J. J.

Rajah Venkata Narsinh Appa Rao Bahadur v. Rajah Surnani Venkata Purshottama Sugganodha Gopal Rao Bahadur, 4 M. L. T. 5.

—————*Widow—Alienation of husband's property by widow—Rights of reversioners to sue.*—The widow of a separated Hindu who had a daughter living gave a perpetual lease of a portion of her husband's property to two persons, strangers to the family, at a nominal rent of Rs. 2 a year. *Held*—that the fact that the daughter's estate might intervene between the widow and the next presumptive reversioner would not prevent the latter from suing for a declaration that the perpetual lease given by the widow could not be detrimental to his interests. *Balgobind v. Ram Kumar* 6 All., 431 followed.

Karwat Husain J.

Hanuman Pandit v. Jota Kunwar, A. W. N. 1908, 207.

—————*Succession—Will of last male owner making daughter's son Karta—claim—daughter's husband.*—A testator made a will containing the following terms. "If no boy is adopted and if our daughter has a son

that boy becomes a dauhitra Karta according to the law so that the boy alone becomes the Karta for the entire property belonging to us.

Held that these words could be construed as appointing a daughter to raise a son only if there were in existence a living custom to which the words can be referred.

Benson & Miller J. J.

Sri Rajah Venkata Nurasemha appa Raw Bahadur v. Sree Rajah Suranani Venkata Purshottama Jaghandadha Gopal Row Bahadur
4 M. L. T. 9.

———*Gift to widow, construction of.*—When a suit brought by a Hindu widow against her deceased husband's co-parceners for possession of her divided husband's share was compromised and certain lands were given to her and another donee in equal shares as full owner and the instrument recited that the gift was made out of motives of generosity:—*Held per Sir ARNOLD WHITE, C. J., and MILLER, J., (WALLIS, J., dissenting),* that the widow took an absolute and alienable interest in her share of the lands given. The gift being made in the same terms to the two donees, there was no reason to suppose that the gift to the widow alone was restricted. Although the suit was brought to recover only a widow's estate, it was competent to the defendant by way of compromise to convey an estate in full ownership, and where the instrument in clear words conveys such an interest, no presumption in favour of a restricted gift ought to be made from the nature of the suit. *Sreemutty Rabutty Dossee v. Sibchunder Mullick*, (6 M. L. A., 1), distinguished.

White C. J. Wallis & Miller J. J.

Sambasiva Ayyar v. Venkataswara Ayyar, 31 Mad., 179.

———*Widow—Alienation by without legal necessity—Consent of female reversioners—alienance, nature of estate taken—Proper purpose—Presumption.* The consent of a female reversioner to the sale by a Hindu widow without legal necessity does not bind or affect the reversioner who takes an absolute estate. The alienee gets only the qualified estate of the alienor. Such consent does not raise a presumption of the purpose being proper.

Madan C. J. & Doss J.

Bepin Behari Kurdu v. Durga Charan Bandopadhyaya, 8 C.L.J. 120.

Jurisdiction—Question of, when entertainable in appeal—Civil Court's jurisdiction when ousted. If the question of jurisdiction depends for its determination facts not found by the lower Courts, an appellant can not ask the High Court to find them; the appellant must substantiate his contention if he can, on the facts already found. If he is una-

ble to point to any facts in respect of his plea, that plea must fail.

The ordinary Civil Courts cannot be ousted of their jurisdiction in the absence of an express provision of law to that effect.

Caspersz C. J. & Sherrfuddin J. J.

Purkit Panda v. Ananda Gaontia, 8 C. L. J. 116.

Insolvent Act, (4912, Vic. c. 21), sec. 27—Commissions on policies of insurance are assets—salary—Emolument. The Commission earned by an insolvent in respect of policies of insurance effected through his instrumentality is an asset and not a "salary" or an "emolument" under sec. 27 of the Indian Insolvent Act. Such commission is not his personal earning.

Russell J.

Jamasji v. Sorabji, 10 Bom. L. R., 579.

—————**Sec. 7—Insolvent—Vesting order—Official assignee—Withdrawal of petition for insolvency—Right of official assignee to bring suit—Right of official assignee to continue suit after withdrawal of petition.** On the 14th October 1903 a petition in insolvency was filed and a vesting order was made by the Court. On the 15th June 1904 the insolvents took out a rule *nisi* to withdraw their petition, and the rule was made absolute on the 21st September 1904. But the orders were not drawn up till 27th February 1906. In the meanwhile the official assignee filed a suit on the 2nd March 1905 on behalf of the insolvents to recover a sum of money alleged to be due to the insolvents' firm in respect of certain mercantile transactions. It was objected on behalf of the defendant that the official assignee was not entitled (1) to bring the suit and (2) to continue the suit after the withdrawal of the petition.

Held, that at the date of the institution of the suit the insolvency proceedings were still in force and that the assets still remained vested in the official assignee. The subsequent coming into force of the order could not vitiate the institution of the suit and it was clear that the official assignee was competent to bring the suit. He was also competent to continue it, for the order of withdrawal, even after it became operative, was not effective to divest the official assignee and re-vest the property in the insolvents. A withdrawal of petition, for which no provision is made in the Act, cannot be regarded as the legal equivalent to its dismissal by consent.

Jenkins C. J. & Batchelor J.

Haji Sajan v. N. C. Macleod, 32 Bom. 221.

—————**S. 36.—Requirements of—**When a creditor makes an application for the examination of a person under section 36 of the Insolvency Act

the Court must be satisfied that there is a probability of some benefit resulting from such examination.

Irwin & Ormond J. J.

Noor Mahomed Admaji Noor Mahomed v. Havabai (14

Bur. L. R. 175).

Issues.—*Framing of—Exact words of the Legislature relating to issues.*—Where the rights in a case have to be determined by reference to the words of the Legislature then those words should be used for the purposes of the issues so far as circumstances permit.

Jenkins C. J. & Batchelor J.

Lakshmandas v. Anna 32 Bom. 356.

Legal Practitioner.—*Unprofessional conduct—attorney appearing for Plaintiff and defendant.*—An attorney who in the name of a firm of which he was the sole partner appeared on behalf of the Plaintiff, also appeared in his own personal capacity for the defendant.

Held that he was guilty of contempt of Court and of improper behaviour and must be suspended.

Rampini, & Stephen, & Fletcher J. J.

In the matter of Lawrence Wilson, 8 C. L. J. 165.

—**Act (XVIII of 1879)—Unprofessional conduct—suspicion muktiair—Renewal of license.**—The renewal of the license of a legal practitioner cannot be refused on the mere suspicion that he was implicated in and privy to the sending of anonymous petitions making serious allegations against a sub-divisional officer and other Government officers.

Caspersz & Sharfuddin J. J.

In the matter of Babu Nirajan Prasad Mohanty Muktear (12 C.

W. N. 919.

Limitation Act, S. 19—Application of, to execution proceedings—Execution of decree—Order in execution proceedings, effect of, as res judicata—Civil Procedure Code, S. 230. Held that orders in execution proceedings are binding on the parties in all subsequent proceedings in that suit on principles analogous to those of *res judicata*.

Held further, that the effect of the previous order must be confined to the point actually decided.

Held also, that the provisions of S. 19 of the Limitation Act cannot affect the absolute prohibition, against the granting of an application after twelve years from certain dates, imposed by S. 230, Civil Procedure Code.

Evans & Greevan J. J.

Bhikhari v. Gauri Shankar, 11 O. C. 220.

———**Art. 45—Alluvial accretion—Settlement of khas mehal land—Suit to set aside an order refusing settlement Reg. IX of 1895.** A suit to set aside an order of the commissioner refusing to make a settlement of khas mehal land with the plaintiff who claimed settlement of it as an accretion to his jote is governed by art 45 of Sch. II of the Limitation Act and not by art. 14.

Stephen & Mookerjee J. J.

Abdul Kadri v. Hamdumiah, 12 C. W. N. 910.

———**Arts. 89, 116, 132—Principal and agent—Suit for accounts—Contract in writing registered—Hypothecation of property—Suit to enforce charge—Limitation.** Where a goomastha hypothecated certain properties to secure moneys which might be found due from him upon taking accounts.

Held—That a suit by the principal in which he not only asked for accounts but also sought to enforce the charge created in his favour, fell within Art. 132 of Sch. II of the Limitation Act and was not governed by their Art. 89 or Art. 116 of the said Schedule.

Semle—A suit by a principal against his agent for accounts is not “a suit for compensation for breach of a contract in writing registered,” when the contract between the parties is embodied in a registered document, and Art. 89 and not Art. 116 of Sch. II of the Limitation Act should govern such a suit.

Motilal v Amin Chand, 24 All. 211 doubted. *Ashgan v. Khurshed*, 24 All., 27. *Jogendra v. Deb Nath*. 8 C. W. N. 113.

Madhule v. Debendra Nath, 1 C. L. J. 147 followed.

Maclean C. J. & Coxe J.

Hatizuddin v. Jadu Nath, 12 C. W. N. 820.

———**Article 91, 144. Benami transaction—Fraud—Deed—Creditor—Equitable mortgage—Suit—Deed declared inoperative and fraudulent.** In order to defeat the claim of an equitable mortgagee of certain property, the predecessor in title of the respondent, and co-member with him of a joint Hindu family, executed on 11th June, 1895, what purported to be a deed of sale of the property in favour of the predecessor in title of the appellant. The claim, however, was decreed, the Court finding that the vendee under the alleged deed of sale was aware of the equitable mortgage, when the deed was executed; and the decree was satisfied by money raised on the security of the property by the vendee. In a suit by the respondent against the appellant to have it declared that the deed of 11th June, 1895 was merely a *benami* and fraudulent and in-

operative as against the plaintiff. *Held*, that the purpose of the fraud not having been effected, there was nothing to prevent the plaintiff from repudiating the transaction as being *benami* and recovering possession of property. *Held*, also, that the deed being inoperative, it was necessary for plaintiff to have it set aside as a preliminary to his obtaining possession of the property. The suit was therefore governed, not by article 91, but by article 144 of Schedule II of the Limitation Act and consequently was not barred by lapse of time.

Petherpermal Chetty v. Muniandy Servai, 35 Cals 551.

———**Art. 97, 116.—Vendor and purchaser.—Breach and covenant—Refund of consideration.**—The defendant sold to the plaintiff half of a village on 16th September 1899. In respect of $\frac{1}{2}$ of that share one Nanji was recorded in possession in lieu of maintenance. The plaintiff purchased with knowledge of his rights and obtained a relinquishment from her. The Courts, in spite of the relinquishment, refused to record the name of the plaintiff. The plaintiff brought a suit for possession against Nanji but that suit was dismissed on 23rd November 1900. The plaintiff brought the present suit for recovery of proportionate amount of sale consideration and damages on 9th July 1904. Among other covenants there was one to the following effect. (Agar Kisi wajeh &c. Mustari Ko Kabza na mile to wah Nalish Karke Kobza lele our main Zimmindar harza our kharcha ka hounga). *Held* that there was a covenant for title and the defendant was liable to refund the proportionate amount of sale consideration. *Held* further that the suit was for compensation for breach of covenant and the suit was not governed by article 97 but by article 116, Limitation Act.

Stanley O. J. & Banerji J.

Mul Kunwar V. Chatur Singh (5 A. L. J. 489). = 1906 A.W.N. 185.

———**Articles 97, 116.—Breach of covenant Dispossession of the vendee—Return of sale—consideration. Registered sale deed.**—A sale deed set out that the property sold was unincumbered and there was a covenant that if the vendee was dispossessed from any portion of the property, the vendors would repay a proportionate part of the sale price. The vendee was dispossessed from a portion of the property by a prior incumbrancer. *Held* that article 116 and not 97 of the Limitation Act governed the suit and the suit could be brought within 6 years from the date of dispossession.

Aikman & Karamat Husain J. J.

Ram Jaggi Rai v. Kauleshar Rai (5 A. L. J. 484).

———**Art 116.—Covenant to deliver—possession.—Possession not**

~~given suit for money~~—*Compensation for breach covenant*.—The defendant executed a bond hypothecating the mortgagee rights in certain property. There was a covenant that the mortgagee will be entitled to recover his money if possession was not delivered more than three years after the execution; the mortgagee brought this suit for recovery of money. Held that the suit in effect was a suit for compensation for breach of contract and was governed by article 116 of the Limitation Act.

Stanley C. J. & Banerji J.

The Collector of Mirzapur v. Dawan Singh 5, A. L. J. 486.

—*Sec. 125.—Hindu Law—Alienation by a Hindu widow—suit by reversioner*.—A suit by a reversioner during the lifetime of the widow to have an alienation by her declared void except for her life is governed by art. 125 of the Limitation Act.

Sembla.—A new cause of action does not arise when owing to the death of next reversioner, a remoter reversioner becomes entitled to sue.

A reversioner whose suit under Art. 125 has been barred may still sue for possession if he survives the widow.

Geitt & Chitty J. J.

Weeram v. Girjanandan Tewari 12 C. W. N. 857.

—*Art. 132.—Agra Tenancy Act. s. 162.—Suit to recover arrears of malikana allowance—Civil and Revenue Courts—Jurisdiction*.

Held that a suit for the recovery of arrears of malikana allowance will lie in a Civil Court and is governed as to limitation by article 132 of the second schedule to the Indian Limitation Act. *Ramcharan v. Gangaprasad* (N. W. P. H. C, Rep. 1870 p. 228) distinguished.

Manohar Lal v. Kashi Ram 1907, A. W. N. 209.

Bannerji J.

—*Art. 142-144.—Suit for possession—duty of plaintiff*.—*Held* also that where the suit is for possession and the cause of action is dispossession, the plaintiff is found to prove possession and dispossession within 12 years, or in other words, the plaintiff must show not only that he has a title, but that he has a subsisting title, which he has not lost by the prescriptive section of the Limitation Act.

Hartnoll J.

Maung Kyaw Zan Hkama Tun v. Maung Lan Nyun. 14 Bur. L. R. 156.

—*Arts. 144, 139.—Landlord and tenant—Transfer of Property Act, s. 116—Representative of a tenant by sufferance a trespasser*

and cannot, without his consent, be converted by the lessor into a yearly or monthly tenant—Suit for possession against such representative governed by art. 144 and not art. 139.—A tenant holding over after the expiry of his term becomes a tenant on sufferance and the landlord's assent alone will suffice to convert such a tenancy into a tenancy from year to year or from month to month according to the nature of the original lease. The provisions of section 116 of the Transfer of Property Act indicate the rule which is *prima facie* applicable in cases not coming under the Act. The representatives of a tenant on sufferance, are however mere trespassers, and the Lessor cannot, by his assent alone, convert such representatives into tenants without their concurrence. In a suit by a lessor to recover possession from a tenant for a term of years, time begins to run under article 139 of the Limitation Act from the expiry of the term, when the tenancy is determined within the meaning of the article. *Seshamma Shettati v. Chikaya Hegade*, (25 Mad. 507), approved. Article 139 deals only with the case of persons who have been tenants and whose tenancy has determined. The representatives of a tenant on sufferance who enter on possession at his death are not tenants within the meaning of article 139 and a suit for possession against them will fall under article 144. *White C. J. & Willis J.*

Vadapalli Narasimham v. Dronamraji Seetharamamurthy (31 Mad. 69).

—————**Arts. 178, 179—Execution of decree—Decree as originally framed incapable of execution—Amendment of decree—Limitation.** A decree for sale under s. 88 of the Transfer of property Act, 1882, and the order absolute for sale under s. 88 directed the sale of a village which was non-existent. The decree was, however, amended on the application of the decree-holders. *Held* on an application for execution by the decree-holders that such a decree was until amendment incapable of execution. and limitation therefore began to run, not from the date of the decree, but from the date of its amendment. *Muhammad Suleman Khan v. Muhammad Yar Khan* (17 All., 39) followed.

Aikman & K. Husain. J. J.

Behari Lal v. Risal, A. W. N., 1908, 191.

—————**Art. 178.—No limit for application for foreclosure of mortgage...Regulation XVII of 1806—Revision on point of Limitation starting point of Limitation for declaratory suit by mortgagees to be declared owner.**

Held that a mortgagee in possession can make an application under Regulation XVII of 1806 for foreclosure at any time during the sub-

sistance of his mortgagee and is not bound to apply within 12 years from the date of default. Such an application does not also fall under article 178 of the 2nd Schedule to the Indian Limitation Act.

Held also that a suit by such a mortgagee to be declared owner after expiry of the year of grace is not a suit for possession governed by article 135 of 2nd Schedule to the Indian Limitation Act and that the cause of action for such a suit arises from the date on which the mortgage money becomes due.

Per Hurry J.—As long as it continues the mortgagee's possession is that of the owner and is totally different from that of a tenant or trespasser.

Ratigan & Lalchand J. J.

Nagar v. Sundagar (3 P. W. R. 387).

Madras Municipalities Act, (Madras Act IV of 1884), ss. 3 (27, 169, 263—License not required under s. 169 when verandah or other covering erected within the limits of adjacent property.) A public street as defined in section 3 (27) of the Madras District Municipalities Act, extends only up to the boundaries of the adjacent property, The special license under section 169 of the Act which is required in the case of projections 'over pyals and payments in front of any building land in a public street' is not required in the case of verandahs and other coverings within the limits of adjacent property.

Wallis J.

Narasimma Chari v. Chairman, Municipal Court, Conjeeveram.
31 Mad., 181.

Madras Municipal Act.—(III of 1904) Act (III of 1904) Sec. V —“ Capital ”.—Where only a part of the nominal capital of a company was actually subscribed and it was claimed to tax the company for the whole of the nominal capital,

Held that the word “ capital ” in sec. V of the Madras Municipal Act means paid up capital.

Benson & Munro J. J.

The Mylapore Hindu Permanent Fund Limited v The Corporation of Madras (3 M. L. T. 400).

Madras Towns Nuisances Act Sec. 3 (6)—Exposing fish for sale —Whether an offence.—Where the evidence showed conclusively that owing to the accused selling fish on the road-side near the market numbers of people collected there and caused an obstruction.

Held that the exposing of the fish was an offence under Sec. 3 (6) of the Town Nuisances Act.

Benson & Boddam J. J.

The Public Prosecutor v. Ranna (3 M. L. T. 400).

Mahabrahmani offerings—contract with respect to—Representations of parties to the agreement, effect on—Immoveable property—Transfer of non-existent property.—Held that a contract amongst Mahabrahmanis with respect to the distribution of alms to be received in the future by the exercise of voluntary charity is not enforceable against the heirs or representatives of the parties to the agreement.

Mahomedan Law—Divorce—Marriage contract—option of Talak given to wife in exercise of option.—Delay effect of when not unreasonable.—When a power is given to a Mahomedan wife by the marriage contract to divorce herself on her husband's marrying, again, if the husband does marry, again, she is not bound to exercise her option at the very first moment she hears of the news. The injury done to her is a continuing wrong and she has a continuing right to exercise the power.

Coxe & Dees J. J.

Shrimati Aytunnessa Bibi v. Karam Ali (12 C. W. N. 997.)

—————**Defecto guardian—mother—transfer by—Lunatic's benefit setting aside of transaction.**—When a Mahomedan mother acting as a defecto guardian of her son who is a lunatic, deals with his property on his behalf and for his benefit, the transaction should not be set aside, although under the Mahomedan Law she cannot be his guardian.

Stanley C. J. & Banerji J.

Ummi Begam v. Kesho Das 5 A. L. J. 474.

—————**Pre-emption—Customary right—Hindus of Bihar—Pleadings—Right of pre-emption, assertion of Proof—Delay in assertion—When to be made—Formalities—Who can perform—Manager of adult female under Court of Wards, rights and duties of Court of Wards Act (Bengal Act IX of 1879) ss. 14, 39, 40, 48, 49, 50—Bengal Estates Partition Act (Bengal Act V of 1897). ss. 29, 25.** The Hindus of Bihar have adopted the Mahomedan law of pre-emption for long time. When existence of the custom, under which Hindus have the same right of pre-emption under the Mahomedan law as Mahomedans in any district, is generally recognised, it is not necessary to assert or prove it. *Fakoor Rawat v. Sheikh Emambakhsh*, W. R. (F. B.) 148, explained. There must be no delay in the assertion of the claim of pre-emption or *talak-mewaribat* but before the shafte or pre-emptor can assert his right to pre-emption, he must be satisfied by evidence, which he holds to be credible, that a sale has been completed. Under the Mahomedan law, before it can be held that the sale is complete there must be ascertainment of the vendor's right in the property, and the solution of this

matter is to be found in determining in each case what the intention of the parties was. There is no fixed time within which the *talab-i-istishad* should be performed, and it is a question of fact for the Court to determine, whether it was done within due time. The performance of the *talab-i-istishad* is not meant to be done for the information of the vendor or vendee, though no doubt, its effect may be to give them information. The formality is insisted on with the object of securing evidence that the pre-emptor has really asserted his right and because evidence is wanted in order to establish proof before the Magistrate, and, unlike the *talab-i-mowibat*, it must be performed in the presence of witnesses. The performance of the ceremony in the *kachari* of the vendor is a sufficient compliance with the law. A guardian or manager under the Court of Wards can perform and it is his duty to perform the ceremonies of pre-emption on behalf of an adult female ward of Court; and from the omission in the Court of Wards Act to confer the right expressly on the guardian or manager, it does not follow that he is not entitled to perform these ceremonies. Fabrication is not one of the devices permissible under the Mahomedan law for defeating the right of pre-emption. *Per Case J.* An order under s. 29 of the Bengal Estates Partition Act has not the effect of dividing the shares of the proprietors finally, until the date specified in s. 95 of the Act, and, until the later date, the right of pre-emption subsists.

Brett & Cox J. J.

Jadu Lal Sahu v. Janki Kver, 35 Cal. 575.

Malicious prosecution—suit for damages—Prosecution started by Police upon information from Defendant—Real prosecutor liable.—A private individual upon whose information, to the Police a prosecution was started, cannot escape liability for damages for malicious prosecution by urging that the Police can not be prosecuted if it appears that he himself was the real prosecutor—or.

Maclean C. J. & Does J.

Harisharan Sant v. Kailash Chandra (12 C. W. N. 817).

Mamlatdars' Court Act, (Bom. II of 1906) s. 7 and 23—Mamlatdars' Court Act (Bom. Act III of 1876), s. 5—General Clauses Act (I of 1904), s. 7—Repeal of the Mamlatdars' Court Act (Bom. Act III of 1876) by the Mamlatdars' Court Act (Bom. Act II of 1906)—Suit commenced under the former Act—Effect of the latter Act. The plaintiff filed a suit on the 24th February 1906 under the Mamlatdars' Courts Act III of 1871. On the 29th October 1906 the Mamlatdars' Courts Act II of 1906 came into operation, and by section 2 of that Act the Mamlatdars' Courts Act III of 1871 was repealed. On 26th January 1907 the Mam-

latdar dismissed the suit with costs. On the 12th March 1907 the plaintiff under section 23 of the Mamlatdars' Courts Act II of 1906, presented an application for revision to the Collector. Under the Mamlatdars' Courts Act III of 1176 the Collector had no power of revision. *Held*, that having regards to the words of the Bombay General Clauses Act the Collector had no jurisdiction: to hold otherwise would be to affect a legal proceeding in respect which had accrued under the old Act.

To disturb an existing right of appeal is not a mere alteration in procedure. *Gulam Rasul v. Balu Sayaji* 9 Bom. L. R. 527 and *Vajechand Ramji v. Nandram* 31 Bom. 545, not followed.

Jenkins C. J. Balchelor J.

Nana v. Sheku 32 Bom. 337.

Mortgage—Redemption by Purchaser.—Sale held invalid—Right to recover the amount paid for redemption.

Held that the purchaser in possession paying off incumbrance on property is entitled to recover the sums paid by him.

Wallis & Munro J. J.

Chama Swami v. Padala Anandn.—(3 M. L. T. 395).

—————**Sub-mortgage—Right of sub-mortgagee to bring the mortgaged property to sale—Parties.** *Held* that in a properly constituted suit a sub-mortgagee is entitled to a decree for sale of the mortgaged property. The mortgagor in such a suit must be impleaded, as also the mortgagees, so that the former may have an opportunity of redeeming, and the latter may be able to safeguard their interests in regard to the claim put forward by the sub-mortgagee and see that the amount claimed is due,

Stanley C. J. & K. Husain J.

Ahmad Ali Khan v. Bilas Rai, A. W. N., 1908, 191.

Municipality—Water connection—Rules of-framed by the Municipality—Construction of the rules—The plaintiff, the owner of a house in Surat, took in 1898—a water connection from the main pipe laid by the defendant Municipality. Under the rules he was chargeable with one rupee a month for the water supplied to him and the condition was that his house was not to be inhabited by more than three families. The defendant Municipality made a new set of rules in 1905, under which they called upon the plaintiff to take—separate water connection for each of the families living in his house, and they threatened to cut off the connection in case of non compliance. The plaintiff brought this suit to restrain the Municipality from so doing.

Held that under the rules so long as plaintiff occupied a house not inhabited by more than three families, he was entitled to the water supply.

Scott C. J. & Knight J.

The Surat City Municipality v. Tyabali Daudbhai (10 Bom. L. R. 622.)

N. W. P. Rent Act S. 174.—*Lease by Collector—Proceedings commenced before the passing of Act II of 1901—termination of.*—In executing a decree of a Rent Court, the Collector, purporting to act under Sec. 174 of the N. W. P. Rent Act made a lease of the property of the judgment debtor, after the passing of the Tenancy Act II of 1901. In a suit brought to set aside the lease, *held* that the execution proceedings having commenced before the passing of the new Act should have been completed under that Act and the Collector could grant a lease of the property instead of selling it.

Stanley C. J. & Banerji J.

Ghulam Abbas v. Abdulla Khan (5 A. L. J. 472).

Occupancy holding—Transferability—Usage—Growing usage not sufficient—Usufructuary mortgage by tenant—Subsequent relinquishment to landlord—Right to landlord to re-enter—mortgage or out and out sale. In 1894 occupancy raiyat executed a usufructuary mortgage of the holding put the mortgagee in possession and though it was arranged that the tenant would continue to pay rent to the landlord the tenant left the village and abandoned all connection with the land. In 1901 the tenant executed a deed relinquishment in favour of the landlord and surrendered the land to him, and it did not appear that he had any rent since. *Brett J. held* on second appeal upon a consideration of the terms of the mortgage bond and the circumstances connected with the transaction that although the document purported to be a usufructuary mortgage for sixty years, the transaction was really an out and out sale and the deed was drawn up in that form in order to evade the provisions of law against the transfer of occupancy holding.

Held by Rampini C. J. and Mitra J.—That apart from such considerations, the moment the deed of relinquishment was executed by the tenant, the landlord became entitled to re-enter.

A growing usage of transferability of occupancy-holdings is of no effect against the landlord. The usage, to be effective must have already grown up.

Rampini & Mitra J.

Rajendra Kishore Adrikari v. Chandra Nath Dutt, 12 C. W. N. 878.

Negotiable Instruments Act (XXV of 1881) Secs. 30, 39, 86.
Hundi payable at sight—Unconditional acceptance.—Holder agreeing to arrangement for payment with acceptor—Notice of dishonour—omission to give.—Drawer discharged.—The acceptor of a Hundi payable at sight accepted the Hundi unconditionally. The holder of the note agreed to receive the money in three day's time and did not give notice to the drawer of the arrangement. The acceptor failed to pay the amount within the promised time, the holder gave the drawer notice of dishonour 10 days after that date.

Held that the conduct of the holder discharged the drawer from his liability under the terms of sections 30, 39, and 86 of the Negotiable Instrument Act.

Rampini & Sarfudin J. J.

Karan Baid v. Pir Bux 8 C. L. J. 103.

Partnership—When retired partner is liable—Rights of person dealing with a firm—joint Hindu family—Effect of partition of long standing—Indian Contract Act Secs. 239, 245 and 246. *Held* following *Chand Mal v. Ganga Ram* 78 P. R. 1903, that it is clearly established Law that a partner who has retired before a certain transaction with the firm to which he had belonged takes place cannot be held responsible unless it can be shown that the transaction was with either a previous customer or one who was aware that the retired partner had been a partner. But when a person deals with a firm without even knowing that a certain person who was already retired ever had been a partner, such person is clearly not liable to him whether he has notice of the retirement or not unless of course he has actually held himself out to be a partner—a position which gives rise to a different class of consideration.

Held also that if a person is a Member of a firm and known to be such, persons dealing with the firm can hold him responsible to them who knew of his partnership unless he takes proper steps to make his retirement clear. But when partition has taken place among the members of a joint Hindu family since a long time all the members cannot be made liable simply because they have not taken the precaution of publicly proclaiming their partition.

Chatterji & Robertson J. J.

Main Amer Singh v. Seth Chand Mal, 3 P. W. R. 345.

———**Dissolution of—Civil Procedure Code Sections 17, 215, and 215 a.—Amendment of plaint—Jurisdiction.** K. and others sued J. and others for recover of a debt alleged to have been advanced for working a cotton and flour mill. The plea was that under an agreement

with their father, the plaintiffs became partners in the factory to work which they advanced capital their share being fixed at one fourth of the profits and losses and the rate of interest on their advance at 6 percent per annum.

The Lower Court on this plea held that the plaintiffs were not entitled to sue as for recovery of a loan, but that their proper remedy was to sue for an account of the partnership. It ordered amendment of the plaint accordingly and after enquiry directed the full amount with interest.

Held (1) That the amendment of the plaint as being approved of by the Chief Court in appeal from that order could not further be discussed.

(2) Section 215a, Civil Procedure Code is imperative and preliminary decree for dissolution of partnership must have been passed before the accounts could be gone into.

That the suit being one arising out of contract the agreement of partnership being written and executed at Ferozpur and the defendants being British subjects of the Ludhiana District subject to the law of British India, it did not matter that the factory which was the subject-matter of the partnership was situated in a foreign territory and hence that the Ferozpur Court had jurisdiction to try the suit.

(4) Methods that may be applied against the party bound by the decree to furnish accounts pointed out and held also that the party may be treated as in default after being allowed suitable opportunities to furnish accounts, the party fails to do so.

Chatterji J.

Jaganandan Singh v, Kishori Chond, 3 P. W. R. 339.

Possession—Proof of title—Presumption in favour of the man in possession.—Possession in itself title in the absence of proof displacing the presumption that arises from possession. The man in possession starts with this presumption in his favour, and the maxim *presumptitur retro* applies, and it is therefore for the other side to show not only that the former's possession is not evidence of his title but that the latter has a superior title.

Russel & Batty J. J.

Bhagvansing v. The Secretary of State (10 Bom. L. R. 571).

Practice—Not proper to examine defendant first as a witness. It is not only illegal, but improper and unfair for Courts to permit the defendant at the very outset of the case to be put in the witness box nominally as plaintiff's witness to be cross-examined in the presence and hear-

ing of the plaintiff before the plaintiff is even called upon to go into the box and tell his own story. This practice generally prevalent as it is in the Courts of Punjab is much to be deprecated. It is certainly in accord with justice and equity that a party who has to defend a suit should hear what his opponent has to say before he is called upon for an answer and it is only under exceptional circumstances that the opponent should be called at all as witness of the party who may be then putting his case before the Court. (5) It is improper for a Judge to receive from any party to a suit private communication in writing as to the special grounds of requiring production of certain documents which communication is kept concealed from the opposite side.

Chitty & Johnstone J. J.

Max Mink and Mary Mink o. Shankerdas, 3 P. W. R. 393.

Pre-emption—Wajibalarz—custom or contract—Construction.—A *Wajibalarz* provided that "no pre-emption suit has as yet been brought or decided. We agree that the custom of right of pre-emption should prevail in future (*aenda jari rakhsa Lai*) " In the *wajiburlarz* prepared at the subsequent settlement, No such clause was inserted.

Held that the record was a record of contract and not a record of pre-existing custom and came to an end with the subsequent settlement.

Stanley C. J. & Karamat Husain J.

Sasaduk Husain Khan v. Ali Husain Khan (5 A. L J. 470).

Registration—Compromise petition, constituting a lease and filed in a criminal proceeding, Plaintiff sued a tenant for increased rent on the basis of petition of compromise filed in a criminal proceeding which resulted in the withdrawal of the proceeding, though no order was passed incorporating the terms of the petition.

Held—That the petition was not admissible in evidence without registration.

If the petition had been filed in a Civil proceeding and had been followed by an order or decree which embodied directly or indirectly its terms, then it would not have been necessary to have had it registered.

Maclean C. J. & Doss J.

Biraj Mohini Dossi v. Kedar Nath, 12 C. W. N. 854.

————— **Act, sec. 17 (o)—Registration—Transfer of Property Act,—Fishery rights.** Sale-certificates, that are granted by the Collectors after sale of "B class" of surplus lands acquired by Government under the provisions of the Land Acquisition Act, are sufficient in

themselves to validate the transfer of title from Government to the transferee without being registered. Fishery rights in water on certain portions of the land transferred to the purchaser by the sale-certificates, cannot exist separate from the land.

Brett J.

Sarat Chandra Roy Chowdhury v. Jatindra Nath Mukerjee, 35, Calc., 595.

———S. 17 (1)—*Hypothecation clause in consent decree—Whether mortgage or charge—Transfer of Property Act*, ss. 58, 100. In a suit for recovery of money due on Vahi-khata accounts, a decree was made upon a petition of compromise for the payment by the Defendants of a certain sum by instalments. The decree further declared that certain immoveable properties specified in the petition of compromise “shall be hypothecated for the realisation of the money and that the defendants shall not be able to create any incumbrance on the same.”

That the hypothecation of immoveable property was the consideration for the time allowed for payment of the sum decreed by instalments, and thus formed an integral and necessary part of the adjustment of the claim in the suit, and the Court did not act contrary to the provisions of S. 375, Civil Procedure Code in inserting this clause in the consent decree.

Held further on the construction of the hypothecation clause, that it merely created a charge within the meaning of S. 100 of the Transfer of Property Act and not a mortgage within S. 58.

Mitra & Casperez J. J.

Govindra Chandra Paul v. Dwarka Nath Saul, 12 C. W. N. 849.

———S. 60—*Effect of certificate*. S. 60 does not make the registering officer's certificate conclusive proof that the document was duly registered and that the validity of registration is a matter for the determination of the Courts.

Irwin & Hartnoll J. J.

Maung Kyaw v. Sithsambaram Chetty, 14 Bur. L. R. 162.

Revenue Sale—Arrears of revenue—Kist—Payment after last day of one kist and of the last day of the next kist—Appropriation—Implication from amount paid—Notice—Revenue Sale Law (Act XI of 1859) ss. 5, 13—Contract Act (IX of 1872) ss. 59, 60—Where the revenue for the January kist of a mahal was not paid on the last day of payment and subsequently the Collector issued a notification under ss. 5 and 13 of Act XI of 1859 that, if arrears of revenue be not paid on or before the 28th March (“ the next latest day for payment of revenue ”) the mahals mentioned therein would be sold, and where the amount remitted by the defaulting

proprietor and received by the Collector on the 28th of March was very much less than the revenue for the March *kist*, but somewhat in excess of the arrear in question. *Held*, the payment was by implication intended for the January *kist* and should have been so appropriated by the Collector. *Held* further, that there being nothing specific on such a matter in Act XI of 1859, we must fall back upon the general law, which practically the same as embodied in ss. 59 and 60 of the Contract Act. *Ganga Bishun Singh v. Mahomad Jan*, I. L. R. 33 Cal 1103, not followed.

Madan C. J. & Dass J.

Jogendra Mohan Sen v. Uma Nath Guha, (35 Cal. 636.)

Specific Relief Act, (1 of 1877) sec. 21. cl. (a)—*Suit for recovery of money agreed to be paid on a mortgage—Debt—Specific performance of contract to lend money.* The plaintiff mortgaged certain property to the defendants for Rs. 12,000. He received Rs. 4,000 in cash. Rs. 7,000 were left with the defendants to pay off a prior mortgage and the balance Rs. 1,000 was to be paid to the plaintiff after a month and a half. This was a suit to recover this sum of Rs. 1,000. The defence was that the defendants had to pay Rs. 84,00 due to the prior mortgagee so that instead of there being a sum of Rs. 1,000 due to the plaintiff he owed Rs. 400.

Held that, it being a contract to lend money, a suit for specific performance of such a contract was not maintainable.

Held further, that such a contract does not create a debt.

Chamier J. C.

Meddi Abbas v. Muhammad Fakr-ud din, 11 O. C. 217.

Tort—Suit against joint tort-feasors—Compromise between plaintiff and one defendant—Such compromise no bar to a decree against the other defendants.—The plaintiff sued several defendants jointly to recover damages in respect of an alleged assault committed on him by these defendants but entered into a compromise with one of the defendants. *Held*, that this compromise did not preclude the plaintiff from recovering damages against the other defendants. *Brinsmead v. Harrison*, 7 Sc. and L., distinguished.

Richards J.

Ram Kunwar v. Shetkh Ali Hussain, A. W. N., 1908, 190.

Transfer of Property Act, sec. 52—*Lis pendens*—sale during the pendency of suit—Service of summons not effected—Effect of. When after the institution of a suit for pre-emption, the vendee sells the property the sale cannot, having regard to the provisions of section 52, Transfer of Property Act, affect the right of the plaintiff to the decree which he might

have obtained in the suit, as the purchaser takes the property subject to the result of the suit.

Stanley C. J. & Bannerji J.

Ghasity v. Gobind Das, 5 A. L. J. 477.

—————**Sec. 52—*Lis pendens*—Mortgage suit—Interest in moveable property—Contentious suit.** A suit on a mortgage is a suit with respect to an interest in immoveable property and a suit for sale on a mortgage prying for relief against the mortgagors and others is from the beginning a contentious suit within the meaning of section 52 of the Transfer of Property Act.

Mittra & Bell J. J.

Durga Prasad v. Madho Prasad, 8 C. L. J. 103.

—————**Sec. 58,—Suit for personal remedy.** The plaintiffs advanced money to the 1st defendant on the security of a house standing on Government lease hold land, the 2nd defendant being surety to the payment of any deficiency which there might be, if the house when sold, did not realise the amount due on the mortgage. The Government terminated the lease and allowed the 1st defendant Rs. 300 as compensation for removal of the house, and leased her another site. The 1st defendant built a house on such last mentioned site, partly with materials of the house, on his former site and partly with new materials, purchased by raising money from the 3rd defendant. The 1st defendant subsequently transferred the new house to the third defendant in satisfaction of what she owed her.

The plaintiffs sought to enforce their mortgage over the new house.

Held, that they had no claim upon the new house for the house which was the mortgaged property, having been destroyed under compulsion and the security rendered insufficient, and the mortgagees having required another sufficient security, which the mortgagor failed to give, the only remedy open to them was to sue the mortgagor personally for the debt, as provided by section 68 of the Transfer of Property Act.

Fox C. J. & Hartnoll J.

Palaneapa Chetty v. Mashan and others, 14 Bur. L. R. 159.

—————**Ss. 75, 85 and 86,—Two successive simple mortgages, right of second mortgagee to decrees for sale subject to the first mortgage.** Where all parties interested are before the Court it is the duty of the Court under sec. 85 T. P. Act to make a decree which shall preclude the necessity of further litigation for the enforcement of any right arising out of the mortgage in the suit. Sec. 96, T. P. Act does not support the view

that the puisne mortgagee is not required to redeem the prior mortgage when the latter is a party to the suit. *White C. J. & Miller J.*

Crngayam Venkataramala Iyer v. Henry James Colly Gimparty,
3 M. L. T. 397.

—————**Sec. 85—Mortgage suit—Parties—Omission to join all the heirs of a purchaser of mortgaged property within time—Effect—Limitation—Notice—Apportionment of debt.** Where three days before the period of limitation would expire a mortgagee instituted a suit on his mortgage making the original mortgagors and one out of several heirs of a purchaser of the mortgaged properties—defendants and the latter in his written statement filed after the period of limitation had expired objected that the suit was not maintainable by reason of the other heirs of the purchaser not having been made parties.

Held—That the suit could not be dismissed on the ground of defect of parties unless it was found that the plaintiff was aware at the date of the suit of the interest of these persons in the mortgaged property.

Held further, that the proper procedure was to add these heirs as parties and if it appeared that at the date of the suit the plaintiff was not more aware of their interest in the property to ascertain what proportion of the debt was due by the heir who had been made a party in time and to pass a decree against his share for that account.

Rampini C. J. & Ryves J.

Bariruddin Biswas v. Debendra Nath Biswas, 12 C. W. N. 111.

—————**sec 90.—Costs—mortgage decree—Decree of costs if part of other properties.**—A decree for costs is a part of the mortgage decree and in execution of such decree, the mortgaged properties, must first be sold and only if such sale does not satisfy the whole decree, can the other properties of the mortgagor be proceeded with in the manner laid down in section 90 of the Transfer of Property Act.

Geidt, & Chitty J. J.

Rajkumar singh v. Dheo Narainsre 8 C. L. J. 152.

—————**S. 91.—Mortgage—Fixed rate tenant—Suit by zamindar to redeem, a mortgage made by a fixed rate tenant on the death of the tenant without heirs.**—Held that the zamindar is not, within the meaning of section 91 of the Transfer of Property Act, 1882, a person having an interest in the mortgaged property so as to entitle him to redeem a mort-

gage of his holding made by a tenant at fixed rates who has died without heirs.

Richards & Karamat Hasan J.

Ram Dihal Bai v. The Maharaja of Vizianagram, A. W. N.

1908, 210.

———s. 99—Assignee of a money decree obtained by the mortgagee right of, to sell in contravention of s. 99 Transfer of Property act—Estoppel—Civil Procedure Code, s. 232—Held—that s. 99 of the Transfer of Property Act applies as much to the transferee of a money decree obtained by the mortgagee as to the mortgagee himself.

Chhagan Guman Gujarathi v. Lakehman 31 Bom. 462 and *Jivaramtham Mudaliar v. Srinivasa Mudaliar* 31 Mad. 33 followed.

Chamier & Greevan J. G.

Sripal Singh v. Gouri Shanker, 11 O. C. 231.

Undue influence.—*The Indian Contract Act—Amendment Act, (IV of 1899), sec. 2—Presumption—Landlord and tenant dominating the will—Kabulyat unfairly obtained.* There is no broad or general presumption that a landlord even an influential one can so dominate the will of his tenants as to induce them to make unconscionable bargain in his favour.

The onus of proving that a Kabulyat was unfairly obtained lies on the person who alleges it.

Where a Kabulyat was executed by several persons it cannot be set aside as a whole when all the executants did not question it.

Per Ryves J. It is incumbent on a party be he plaintiff or defendant who seeks to avoid a contract on the ground of fraud or undue influence, to give in his pleadings full particulars of the circumstances on which he relies as the basis of this plea. It is not enough to boldly assert that fraud or the like vitiated the contract.

Rampini C. J. & Ryves J.

Baja Prymada Nath Roy, Bahadur v. Knipo Moolah, 8 C.L.J. 135.

Water—Damage caused by retention of—Liability of owner of land for damage caused by storage of water.—An owner of land is not liable for damage caused to the other lands by the retention of water on his land in the natural and usual course of enjoying his property. The retention of water by a person on a portion of his land to prevent its passing on to other portions of his land is not an act done in the natural and usual course of and enjoyment the person so doing is liable for damage caused thereby. *Moholal v. Bai Jivkore* (28 Bom. 472) doubted and distinguished.

White C. J. & Miller J.

Bamanji Ohariar v. Krishnaswami Mudali 31 Mad. 169.

Water, Right to.—*Infringement of water right, whether contractual or proprietary, when likely to cause damage, may be restrained by injunction though no evidence of actual damage is given.*—Ryotwari lands belonging to the plaintiff had been irrigated for a period of more than 60 years by a channel without any interference on the part of Government. The defendant without any justifying cause blocked up the mouth of the channel cutting off the entire supply of water. The plaintiff without claiming any damages but stating in a general way that he had been damnified by the Act of the defendants sued to restrain the defendants by injunction from interfering with the channel:—*Held*, that the plaintiff was entitled to the injunction sued for whether his right to the water was based on a contract with Government or whether his right was a proprietary right appurtenant to his ownership of land.

In either view of the case, the plaintiff is entitled to succeed without an express finding as to damage. It is such as to be likely to cause damage to the plaintiff and the stoppage of the entire supply of water is such an act. The interference with contractual relations without sufficient justification is a violation of legal right which gives a right of action to the party whose rights are infringed. The observations of Lord Macnagh in *Quinn v. Leathen*, ([1901] A. C., 495 at p. 510), referred to.

White O. J. & Miller J.

Rama Odayan v. Subramania Aiyar, 31 Mad, 171.

Will—Construction of document—“Money”—*General personal estate.* Where a testator after clearly indicating an intention to exclude entirely certain of his relations from succession to his property, proceeded to bequeath his “money” to two legatees, with directions as to its disposal, it was *held* that the intention of the testator being apparently, from a perusal of the whole will, to bequeath all his personal properties to the legatees, it was not necessary to construe the term used in its strict limited signification, but the whole of the testator’s personal estate passed.

Stanley C. J. & Burkitt J.

Oheda Lal v. Gobind Ram, A. W. N. 1908, 205.

THE LAWYER.

1st OCTOBER 1908.

Part I.

DIGEST OF RECENT INDIAN CASES (CIVIL)

Account—Suit for account—Officer employed by Receiver—Discharge of Receiver—Right of proprietor to sue for account—Agent and Sub-Agent. Where a Receiver was appointed in respect of certain properties about which there was a litigation in which plaintiff was found to be the proprietor.

Held, that a suit for account at the instance of the plaintiff does not lie against the teshildars employed under the Receiver as they were his Sub-agents and were not liable to render account to the plaintiff.

Brett & Cass J. J.

Jotindra v. Moharam, 12 C. W. N. 1035.

Adverse possession—Possession—One co sharer—Joint property whether adverse possession. Exclusive possession of a co-owner of property which originally had been joint does not *per se* amount to adverse possession as against his co-sharers. Where one of the two sisters remained in possession of the father's property for twenty-one years and the other did not "participate in possession"; *held*, that only did not make her possession adverse.

Stanley C. J. & Karamat Hussain J.

Parbati v. Ram Prasad, 5 A. L. J. 511.

Agra Tenancy Act, S. 22—Occupancy holding—Succession—"Male lineal descendant"—Illegitimate son—Hindu law. The illegitimate son of a man belonging to one of the Sudra castes by a kept woman, or continuous concubine, was capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of section 22 of the Agra Tenancy Act, 1901.

Stanley C. J. & Bannerji J.

Ram Kali v. Jamuna, A. W. N., 1908, 229.

—Section 25, clause (b)—declaration that plaintiff as the adopted son of a tenant was entitled to his tenancy—Declaration of tenancy—Jurisdiction—Civil Court. One D applied to revenue authori-

ties that his adoptive father I, was joint in cultivation with him and that his name should be recorded in respect of I's occupancy holding. The collector dismissed the application on the ground that D was not the adopted son of I. D brought this suit in Civil Court for a declaration that he was joint in cultivation with D and that he was the adopted son of Ishri and that on account of the right of survivorship and his being joint in cultivation he was entitled to the possession of the estate of Ishri and of the occupancy holding.

Held that the nature of the suit was that the plaintiff wanted a declaration as to the class of tenancy to which he belonged and its cognisance by the Civil Court was barred by cl. (b) of S. 95 of the Agra Tenancy Act.

Knox & Richards J. J.

Dori Lal v. Sardar Singh, 5 A. L. J. 514.

———*Section 201—shall presume, meaning of—Presumption conclusive.* The object of S. 201 of the Agra Tenancy Act is that when the name of the plaintiff is recorded in the revenue papers, the Court is bound to presume that he has the right to sue, and the entry of his name should be recorded as sufficient proof, and the Court should not go behind it in order to determine the question of the plaintiffs' proprietary title, the remedy of the defendant being a civil suit. The words "shall presume" in S. 201 of the Agra Tenancy Act do not have the same meaning which are given to them under the Evidence Act; but the presumption raised by them is a conclusive presumption so far as the Revenue Courts are concerned.

Bannerji & Richards J. J.

Bachan Singh v. Karan Singh, 5 A. L. J. 495.

Babooana grant of ancestral property—Grantee's estate of—nature of—Custom—Burden of proof—Partition—Babooana grant—Nature of. Landed property acquired by a grand-father and distributed among his sons does not by such gift become their self-acquired property so as to enable them to dispose of it to the prejudice of the grandsons.

A Babooana grant of ancestral property by the owner of an impartible estate to enure for the benefit not only of a junior member of the family but of his male descendants in the direct line does not lose its ancestral character by the grant. It was not become self-acquired property in the hands of the grantee or his direct male descendants. Hence the other members of the family have the rights in it which they can claim under the Mitakshara law, that is, the right to restrain alienation except in cases of legal necessity and the right to claim partition and the original grantee has no power to dispose of the property by will.

The custom which operates in the case of the Raj itself does not apply to a Babooana grant without the requisite proof which is necessary in such cases. The burden of proof lies upon the person seeking to establish the particular custom and to take this out of the ordinary category of Hindu family property.

Per Brett J.—A Babooana grant is made to a junior member of the family and to his descendants in the male line for their maintenance. The grant is not of a portion of landed property to pay off a certain fixed sum of money which the grantee is entitled to claim on accounts of his maintenance from the Raja, but it is a grant for the maintenance of the grantee and his male descendants so long as there are any.

Brett & Chitty J. J.

Laliteswar Singh v. Bhabeswar Singh, 8 C. L. J. 124.

Bangal Land Registration Act (Bengal Act VII of 1876) s. 78
Milkiat property—Entry in register of revenue-free estates—*Regulation II of 1819*. There is a distinction between a *mal'kiat* or revenue-free estate which is covered by an entry in the register of revenue-free estates after proceedings held under Regulation II of 1819 and a revenue-free *mal'kiat* estate not so entered. In respect of the latter there need be no registration under the Land Registration Act (Bengal Act² VII of 1876) and the provisions of s. 78 of the Act do not apply to them.

Mitra & Caspers J. J.

Pitamber Singh v. Sukrim, 35 Calc. 747.

—————*S. 55, 178 (b), 168—Landlord and Tenant—Decree for rent—Executive—First charge—lien—Regulation VIII of 1819, S. 134*. A zemindar sued his patnidar for arrears of rent and obtained a decree, but previous to the institution of the suit had sold all his interest in the zemindari. The purchaser of the zemindari subsequently instituted proceedings under Reg. VIII of 1819 for further arrears of rent and the darpatnidar deposited the rent under s. 13 of the Regulation. In a suit by the darpatnidar for a declaration that he had a first charge on the patni in respect of the sum deposited by him. *Held*, that the decree obtained by the former zemindar was a decree for rent within the meaning of s. 65 of the Bengal Tenancy Act, and constituted a first charge on the patni under that section with priority to the lien of the respondent.

Rampini & Sharfudin J. J.

Maharaj Bahadur Singh v. Forbes, 35 Calc. 737.

—————**Sec. 88—Sub division of holding—Rights of purchaser—Landlord's title not questioned**. Where the landlord's rights are not ques-

tioned and he does not appear in the suit, a transferee of a share of a holding may maintain a suit against persons who claim under an inferior title even though they may set up a recognition by the landlord.

Stephen & Holmwood J. J.

Gour Kaibarte v. Srimati Tarajan Bibi, 8 C. L. J. 161.

—**Secs 103 B, 105, 106, 108—Record of rights—Suit to correct or alter entries—Maintainability.** No suit lies for the alteration or correction of entries made in the record of rights published under cl. X of the Bengal Tenancy Act. Persons aggrieved by the entries should have recourse to the special remedy provided in that chapter.

Maclean C. J. & Doss J.

Jogendra Nath v. Krishna, 12 C. W. N. 1932.

—**Sec. 106—Record of rights—Application to correct entry made before—Amending Act of 1898—Reference to Civil Court under Amending Act—Jurisdiction—Interpretation of statute—Change of procedure during pendency of proceeding.** A record of rights having been prepared in 1876 the landlord applied in 1897 for the correction of an entry under sec. 106 of the Bengal Tenancy Act as it then was; after the Amending Act of 1898 was passed the case was referred to the Civil Court under the proviso to sec. 106 of the Act as amended.

Held—That the Court had jurisdiction to try, notwithstanding that the proceedings were commenced prior to the passing of the Amending Act which first empowered a reference to the Civil Court.

In matters of procedure an amending act would affect legal proceedings instituted under the repealed provision. *Coxe, & Ryves J. J.*

Rahimuddin Sarrer v. Gagat Kishore Acharya, 12 C. W. N. 987.

—**Sec. 11. Art. 110—Co sharer Landlords—Separate collection of rent—Suit for entire rent by transferee of whole interest of one co sharer making other co-sharers defendants—Maintainability.** Where a tenant is jointly and severally liable for rent to the several co-sharer landlords, a suit for rent by the transferee of the whole interest of one of the co-sharers, making the other co-sharers parties defendants is maintainable and a decree for the entire rent is valid: L. R. 34 I. A. 73 followed, **Held also**, that such a suit is governed by the Bengal Tenancy Act Art. 2. *Mohendra Nath Kalamoore v. Koilash Chandra Dogra*, 4 C. W. N. 505, distinguished.

Milear C. J. & Coxe J.

Shashi Kumar Mirbahar v. Seta Nath Banerjee, 32 Calc. 744.

Central Provinces Tenancy Act, sec. 2 (o)—Gochur lands cannot

be classed in the same category as common lands. The Civil Courts must adjudicate on the rights of the parties as they existed when the plaint was filed and not on any title subsequently derived.

The entry in the settlement recorded is not conclusive; it is only a matter of presumption.

The "holding of a survey number" in section 2 (10) Explanation II of the Central Provinces Tenancy Act has reference to the holding when the proceedings in a Civil Court are initiated, and it cannot avail a person that in a subsequent settlement he was recorded as a tenant.

Casperzz & Sharfudin J. J.

Purkhit Pandya v. Ananda 18 C. L. J. 116.

———**Sec. 46, sub sec. (3)—Ejectment—Suit for—Sub-lease grant of—by tenant.** Under the Central Provinces Tenancy Act, none but an occupancy tenant can be ejected from his holding for granting a sub-lease.

Caspersz & Sharfuddin J. J.

Sadasib Jhemkir v. Jala Gaontia 8 C. L. J. 156.

Civil Procedure Code, s. 13—Res judicata—Cross appeals from one decree—Appeal from one of the appellate decrees but not from the other. If an issue decided against a party is embodied in two decrees and that party appeals from one of them only, the other decree on becoming final operates as *res judicata* and precludes the original and appellate Courts from deciding that issue again. *Panchananda v. Vaitthinatha Sastril* (29 Mad., 333). *Abdul Majid v. Jew Narain* (16 Calc., 533), *Mariamun-nissa Bibi v. Jaynab Bibi* (33 Calc 1101) and *Dinohar Das v. Sheoram Das* (29 All., 730) dissented from.

Karamat Husain J.

Abdul Basit v. Ashfaq Husain, A. W. N., 1908, 211.

———**Sec. 13—Res judicata—Mortgage of Jewmi, suit by a purchaser of a share for partition—Mortgagees parties—Suit by purchaser for possession—Res judicata—Limitation Act, art. 134.—Point taken in second appeal—Secondary evidence.** Held that the claim of the mortgagees to be redeemed was not *res judicata* by reason of the decree in the previous suit where the parties were not the same and the present plaintiff did not claim under the plaintiff in the former suit.

Where the point that the mortgagees had not been formally proved was not taken in the Courts below, the point cannot be taken in second appeal.

Held also that as the time of the first suit the defendant's claim under art. 134 had not ripened and at the time the plaintiff was not bound to redeem the mortgagees, the defendants were not debarred from

putting forward their claim under art. 134 of the Limitation Act.

Where a judgment which containt secondary evidence of a mortgage is put in evidence by the plaintiffs for the purpose of *res judicata* this does not absolve the defendants from the duty of proving their mortgage by original evidence or making out a case for the admission of secondary evidence.

White C. J. & Miller J.

Krishna Pattar v. Arapath Vectil Maivappa, 4 M. L. T. 73.

—————**Sec. 13—*Resjudicata*—Suit dismissed on an alternative ground.**—The decision in a former suit will nevertheless be *res judicata* notwithstanding the fact that the previous suit was dismissed on an alternative ground of decision.

Wallis & Munro J. J.

Mallisheri Ileath Vasudevan Numbudin v. Kovoor Ohathath Kannan Nambiar, 4 M. L. T. 90.

—————**Sec. 13—*Res jndicata*—Mortgage—Redemption suits. Held,** by the Full Bench, following the principle of *stare decisis* that it is open to a mortgagor who has brought a suit for redemption and obtained a decree to bring a second suit for redemption.

(F. B.)

Dhanpat Mal v. Jhaggar Singh, 9 P. L. R. 535.

—————**S, 17, Expl. III—Cause of action arises only where money is expressly or impliedly payable under the contract and not under any general of law.)** The rule of general law that where a contract is silent as to the place of payment, it is the duty of the debtor seek out his creditor and pay him does not control the express provisions of section 17, explanation III of the Code of Civil Procedure, and cannot be applied in determining where, for the purposes of the section, the cause of action has arisen. The place where the cause of action arises under section 17, explanation III, is the place where money is payable, expressly or impliedly, under the contract itself, and not under any general rule of law. When a promissory note payable on demand is made at T and no place is fixed expressly, or impliedly, for payment, the mere fact that the creditor is described at K which is within the jurisdiction of a Court different from that exercising jurisdiction at T does not by virrue of the general rule of law stated above, make K the place of payment for the purposes of section 17, explanation III of the Civil Procedure Code, and Court at K has, in the absence of evidence that the money was payable at K in the ordinary course of business, no jurisdiction to entertain a suit against the debtor who is not resident within the local limits of its jurisdiction.

White C. J. & Miller. J.

Raman Chettiyar v. Gopalachari, 31 Mad., 223=4 M. L. T. 97.

———**S. 26, 28**—*The word 'same matter' in s. 28 wider than the words 'same cause of action' in s. 26—Suit sustainable against several defendants if in respect of 'same matter' although in respect of several causes of action.*) The words 'same matter' in section 28 of the Code of Civil Procedure have a wider scope than the words 'same cause of action' in section 26 of the Code of Civil Procedure, and a suit against several defendants is not bad for misjoinder if the suit, although in respect of different causes of action against different defendants is in respect of the same matter. The English decisions on the scope of Order XVI, Rule 4, are not applicable to cases of joinder of defendants under section 23 Rule 4, are not applicable to cases of joinder of defendants under section 28 of the Code of Civil Procedure. *Muthappa Chetty v. Muthu Palani Chetty*, (27 Mad. 80), not followed. A suit by the transferee of a mortgage for sale against the mortgagor, in which is also included a claim for damages against the transferor, the original mortgagee, if it should appear that any portion of the mortgage debt had been discharged by the mortgagor, is a suit in respect of the 'same matter' within section 28 of the Code of Civil Procedure, and is not bad for misjoinder.

Wallis J.

Aiyathurai Ravuthon v Santhu Meera Ravuthan, 31 Mad., 252.

———**S. 43.**—*Usufructuary mortgage—Suit for redemption—Subsequent suit to recover surplus profits—Limitation Act Article 105—Transfer of Property Act, section 92.* In a suit for redemption of a usufructuary mortgage the mortgagor is bound to claim for surplus profits, if any, payable by the mortgagee. Section 43 of the Code of Civil Procedure is a bar to the recovery of such profits by means of a separate suit.

Artical 105 of the second schedule to the Indian Limitation Act, applies to a case where the mortgagor gets possession otherwise than by means of a suit for redemption.

Aikman & Karamat Husain J. J.

Ram Din v. Bhup Singh 30 All. 225.

———**Sections 102, and 108.**—*Dismissal for default—Mortgage Redemption—Suit barred.* When a suit for redemption of a mortgage is dismissed under section 102 of the Civil Procedure Code for default in prosecution and the order of dismissal has become final a fresh suit for redemption is barred.

Rattigan J.

Gurditta v. Narain Das, 9 P. L. R. 552.

Sec. 108.—*Setting aside ex parte decree—Security.* Where on an application to set aside an ex parte decree passed in a suit on a mortgage bond, whereby property is mortgaged for Rs 6000, which is presumably worth more than that sum an order is made directing the ex parte decree to be set aside on the defendants furnishing security for Rs. 10,000, and on their failure to do so, upholding the decree.

Held that the security required by the lower Court was excessive and it was ordered that the security be reduced to Rs. 1,000, to be furnished within a month from the date of the order and that on such security being given, the case should be restored to the file for trial.

Irwin & Ormond J. J.

Mann Singh v. Armugam Chetty, 14 Bur. L. R. 214.

S. 199.—*Judgment—Judgment written after transfer of the Judge from the place, where the case was heard, if valid.* The judgment referred to in section 199 of the Civil Procedure Code, which can be pronounced by a Judge's successor, may be written after he has ceased to exercise jurisdiction in the place, where the cause of action in the suit to which the judgment relates, arose, owing to his transfer or proceeding on leave.

(F. B.)

Satyendra Nath v. Kaitura Kumari, 35 Cal. 756.

S. 244.—*Question relating to the execution, discharge or satisfaction of the decree—Contest between the holder of a decree for an undivided share of joint property and an auction purchaser pendente lite.* One Wilayati Begam obtained a decree for possession of a share in certain joint and undivided zamindari property, and this decree was executed so far as might be by delivery of formal possession. While the suit in which this decree was passed was pending, one Raghunath Das obtained a simple money decree against another co-sharer in the zamindari and in execution thereof brought the property to sale and it was purchased by Nand Kishore. Nand Kishore got possession. Wilayati Begam applied for mutation of names in her favour, but was resisted by Nand Kishore, and accordingly instituted a suit against Nand Kishore praying for a declaration of her title as against him.

Held that such a suit was not obnoxious to the prohibition contained in S. 244 of the Code of Civil Procedure. *Gulzari Lal v. Madho Ram*, 26 All. 447, distinguished.

Stanley C. J. & Burdett J.

Wilayati Begam v. Nand Kishore, 30 All. 231.

S. 244.—*Direction by an Appellate Court—Whether appealable—Reference by the Privy Council.* An order made, pursuant to an

appellate decree, by a subordinate Court is an order made in execution and so appealable.

Benson & Wallis J. J.

Prayaga Doss Jee Varu v. Tirumala Anandapillai, 4 M.L.T. 92.

———**S. 244—Mortgages under the judgment-debtor—Whether representative.** A mortgagee under the judgment-debtor is a representative of the judgment debtor within the meaning of S. 244 of the Civil Procedure Code.

Wallis & Munro J. J.

Kukkil Kurunakuram Nair v. Panoikkat Narayana Nambi, 4 M.L.T. 85.

———**Sec. 244, 258—Execution of decree—Uncertified payment out of Court—Subsequent execution by decree-holder—Suit to recover sum paid out of Court.** A judgment debtor made a part payment of what was due under the decree against him to the decree holder, but such payment was not certified in the manner required by section 258 of the Code of Civil Procedure, and the decree-holder in consequence was able to take out execution and get the amount paid twice over. *Held* that a suit by the judgment debtor to recover the amount paid out of Court to the decree-holder was not barred either by section 244 or by sec. 258 of the Code. *Shadi v. Ganga Sahai*, 3 All., 538 and *Feriatambi Udayan v. Vellaya Goundan*, 21 Mad., 409 followed. *Stanley C. J. & Burkitt J.*

Gendo v. Nihal Kunwar, A. W. N., 1208. 220.

———**Ss. 244, 258—Ex parte decree—Money realised by decree holders—Decree set aside—Decretal amount reduced—Refund.** B obtained an *ex parte* decree against J for Rs. 1904 and realised the amount. The decree was set aside and the decretal amount was reduced by about Rs. 1800. The judgment debtor applied for refund of that amount. *Held* that the remedy of the judgment-debtor to realise that amount was both by a suit and an application and he could avail himself of any of the two remedies.

When an *ex-parte* decree is set aside the parties are relegated to the position they were in before the decree was passed. Where before the passing of the decree there was an injunction against the defendant from realising certain money from court the injunction was revived when the decree was set aside.

Bannerji & Richards J. J.

Bithaldas v. Jamma Prasad, 5 A. L. J. 527.

———**Sec. 258.—Manager of a joint Hindu family certifying payment of a decree in favour of himself and minor members—Security, power to demand, from manager.** A person acting for himself and as guardian of the minor members of his family obtained a decree in satis-

faction of which he obtained bonds in favour of himself alone and applied under sec. 258, Civil Procedure Code, to have the adjustment certified. The Lower Court directed him to file security on the ground that some of the decree holders were minors.

Held that, as he was avowedly acting as managing member of a joint Hindu family, no security could be demanded from him.

Chamier & Grievan J. C.

Manohar Lal v. Sheo Singh, 11 O. C. 246.

————— **Section 246—Execution of decree—Attachment—Right to attach profits not yet due.** *Held* that a mere right to receive the profits in question not having yet accrued due, is not susceptible of attachment in execution of a decree.

Aikman & K. Hussain J.

Sher Singh v. Sri Ram, 30 All. 246.

————— **Section 266—Execution of decrees—Attachment—Mortgage—Right of mortgagor in respect of money promised but not paid.** Where money promised as a loan by a mortgagee is not advanced in full, the mortgagor is only entitled to recover, if anything, damages for non-payment of the balance: he can not sue for specific performance of the agreement to lend the full sum promised, and the non-payment of a portion of the loan does not constitute a debt which can be the subject of attachment and sale under section 266 of the Code of Civil Procedure.

Stanley C. J. & Burkitt J.

Phul Chand v. Chand Mal, 30 All. 252.

————— **Sec. 282—Application of—Where in execution of a mortgage decree—Land has been attached.** In the year 1903, Piche by his agent Gobalu obtained a mortgage decree against Maung Pan Kaing and ors., with respect to certain land, of which the piece in dispute formed a part. In execution of that decree, Gobalu attached the land in dispute and asked that it be sold. The attachment was unnecessary and he should have asked that his mortgage decree be executed. The land having been attached Maung Po Hla applied for the removal of the attachment on the ground that he bought the land from Manng Kaihg one of the defendants in Piche's suit, in April 1904, i. e. after the mortgage decree had been passed.

It was contended on behalf of Gobalu that he could not now bring a suit under section 283 of the Civil Procedure Code as he had already published a lien on the land by virtue of his mortgage decree, which had been passed against Maung Po Hla's predecessor in interest.

Held that the execution of the mortgage decree should be proceeded with and that Maung Po Hla should be left to take such proceedings and action as he may think fit.

Held also that in a case alike this, the remedy was not by claim under section 278 but was either by regular suit to establish a right to the property, or by resistance to the purchaser or mortgagee or other person, who would be put in possession of the property. *Hartnoll J.*

Gobalu v. Po Hla, 14 Bur. L. R. 20.

—————**Secs. 311, 312 and 244 (c)**—*Execution of decree—Absence of notice to the judgment debtor—Proclamation of sale—Sale at an under value—Application to set aside sale—Dismissal—Appeal against order of dismissal.* An application seeking to have the sale set aside on the ground that no notice had been issued to the applicant in the matter and that in consequence the property was sold at an under-value does not fall within the purview of sec. 311 of the Civil Procedure Code, and an order dismissing the same is not covered by Sec. 312 of the Code. The order falls under sec. 244 of the Code, and is appealable as a decree.

The non-issue of notice to a party concerned is not a material irregularity in publishing or conducting the sale under sec. 311 of the Civil Procedure Code. It is rather an irregularity in proceedings which are anterior to the publishing or the conduct of the sale.

The words “publishing or conducting” in sec. 311 of Code refer respectively to the proclamation of sale under sec. 287 and to the action of the officer by whom the sale was held,

The circumstance that the decree has already been executed does not make sec. 244 of the Code applicable, where the question involved is none the less a “question relating to the satisfaction of the decree.

Batchelor & Chambal J. J.

Parashram Hammata v. Balmukund Lechiram, 10 Bom. L. R. 752.

—————**Sec. 317**—*No bar to suit against assignee from certified purchaser.* Sec. 317 O. P. C., is no bar to a suit against an assignee from the certified purchaser. *White C. J. & Sankaran Nair J.*

Piramarayagam Pillai v. Umar Naicker, 18 Mad. L. J. 305.

—————**Sec. 373, 374.**—*Limitation—Suit—Ultra vires—Fresh suit* **Limitation Act sec. 14.** An order giving leave to withdraw a suit and file a fresh suit on the same cause of action, on the ground that leave under cl. 12 of the Charter to institute it was granted by the Registrar, was held to be *Ultra vires*, and the order was regarded as one only.

directing the plaint to be returned to the plaintiff.

Sec. 373 of the Code of Civil Procedure does not apply except to cases where the suit is properly pending in a Court in which the leave was granted.

A plaint was filed well within the period of limitation. But the leave to institute it under cl. 12 of the Charter was obtained from the Registrar. Under the practice laid down by the Court, it was by leave withdrawn and on the same cause a fresh suit with proper leave was then and there instituted but on a date when, under the usual circumstances, the suit would be barred by limitation.

Held—That the leave to withdraw was not granted under sec. 373 of the Code of Civil Procedure that therefore sec. 374 of the Code could not operate as a bar to the fresh suit and that under section 14 of the Limitation Act it was not barred by Limitation. *Fletcher J.*

Ramdeo v. Ganosharan, 12 C. W. N. 921.

———Secs. 492, 493, 622.—*Injunction—Trespass to property—Defendant in possession and plaintiff out of possession—Jurisdiction—Revision.* Sec. 493 C. P. O. has no application when the defendant is in possession and the plaintiff is out of possession and a Court will be acting without jurisdiction if it grants an injunction in favour of a plaintiff out of possession of the property in dispute.

Sec. 492 C. P. O. has no application when the case is not such a one as is described in the section, viz., waste, removal etc.

Where there is no allegation that the property, the subject of the suit is likely to be wasted or removed by the defendants, the Court will be acting without jurisdiction in issuing an injunction under sec. 492, Civil Procedure Code. *Wallis J.*

S. Subramania Nayinar vs. Vengu Iyer, 4 M. L. T. 91=18 M. L. J. 302.

———Sec. 503, 539.—*Suit for scheme of management of temple—Whether temple property subject of suit.* In a suit for a declaration that a scheme of management of a temple is binding and in the alternative for the settlement by the Court of a scheme.

Held that the temple property was the subject of suit within the meaning of sec. 503 and the Court had jurisdiction to appoint a receiver.

Bodlam & Munro J. J.

K. A. Veeraragava Thathashariar v. R. Krishnasamy Thathachariar, 4 M. L. T. 88.

———**S. 508—Arbitration—Award—Award set aside—Court not empowered to make a second reference on the same submission.** The parties to a suit pending in the Court of a Munsif referred the matters in dispute between them to arbitration. An award was made and delivered; but it was afterwards discovered that one of the plaintiffs had died before the termination of the arbitration proceedings, and the Munsif accordingly set aside the award.

Held that the Munsif had no power to make a second order on the same agreement of the parties again referring to arbitration the matters in dispute between them.

Karamat Husain & Griffin J. J.

Pachkauri Ram v. Nand Rai, A. W. N., 1908, 228.

———**S. 562—Remand—Preliminary point—Dismissal of suit on the ground that plaintiff has no locus standi to maintain the suit—Custom Alienation by male proprietor in the presence of adopted son who is minor—Suit by next reversioner.** Where a suit to set aside an alienation by a male proprietor was dismissed on the ground that the alienor having an adopted son the plaintiff next reversioner was not competent to sue and it appeared that the adopted son was a minor.

Held that the dismissal of the suit was wrong for the plaintiff was competent to sue, and that the order of remand of the suit under S. 562 of the Civil Procedure Code is not illegal in such cases.

Rattigan & Shah Din J. J.

Jiwa Singh v. Khozana, 9 P. L. R. 525.

———**S. 583—Decree for restitution of property silent as to Mesne-profits—Mesne-profits, ascertainment of, in execution department—Orders of His Majesty in Council, powers of Court.** *Held*, that Courts in this country have inherent powers to give effect to orders of his Majesty in Council.

Held, further that, where a decree orders restitution of property but is silent as to *mesne-profits*, the Court, whether by virtue of s. 583, Civil Procedure Code, or by reason of its inherent powers, can order execution for *mesne-profits*.

Chamier & Greevan. J. C.

Ralendra Bahadur Singh v. Raghunath Kumar. 11 O. C. 235)

———**S. 584—Second Appeal—Finding of fact based upon an incorrect view of the law—Joint Hindu Family—Separate transaction by individual members—Entries of separate possession in village records, effect of.** *Held* that, where the parties have not had the benefit of proper discussion of the materials on record, based upon a correct view of the

law applicable to the same, such as they are entitled to receive from a Court of First Appeal, the proper course is to set aside the decree and remand the suit under s. 562, Code of Civil Procedure.

Held, further, that neither, the mere occurrence of separate transactions on the part of individual members of a joint Hindu family nor the fact that property was entered as their separate possession in the village papers, is in any way conclusive on the question of separation.

Pigott J.

Ram Sewak v. Musammat Ram Dei 11 O. C. 264,

———**S. 586**—*Provincial Small Cause Courts Act, Sch. 1, Art. 31—Suit of Small Cause Court—Nature—Second Appeal—High Court.* The plaintiff sued to recover from the defendants Rs. 110 as the value of his share in the produce of certain land alleged to belong jointly to him and the defendants. This right was denied in the written statement. The lower Courts dismissed the suit. On second appeal a preliminary objection was taken that no second appeal lay as the suit was of a Small Cause Court nature.

Held upholding the objection that no second appeal lay. The question of title arose incidentally and did not therefore remove the suit from the cognizance of the Court of Small Causes. *Batchelor & Chaubal J.J.*

Kesrisang Banesang v. Naransang Manabhai, 10 B. L. R. 783.

———**S. 595**—*Remand order—Decision of issue governing the case—Leave to appeal to Privy Council.* The purchaser of a putni which for its own arrears, sued the defendants for Khas possession on the ground that they were trespassers after annulment of their incumbrances by notices duly issued under S. 167 of the Bengal Tenancy Act. The Court of first instance dismissed the suit on the ground that the plaintiffs failed to prove that the notices were duly issued and served. The appellate Court took the opposite view, holding that the notices had been properly served and remanded the case for the trial of other issues.

Held that though the order purported to be only an order of remand, yet as the Appellate Court reversed the decision of the first Court upon an issue which governed the whole case, the decree of appellate Court is a final decree within the meaning of S. 595 of the Code of Civil Procedure.

Maclean C. J. & Doss J.

Rajabala Debi v. Nuffer Chunder Pal Chowdhry, 8 C. L. J. 168.

———**S. 622**—*Revision, when Allowed*—Where there is no irregularity or want jurisdiction, the order of the Lower Court even if erroneous

cannot be disturbed in revision. *Kedar Nath Sen v. Uma Charan O. C. W. 57.*

Chamiere & Greevan J. C.

Dwarka Prasad Singh v. Janaki Prasad Singh (11 O. C. 238.)

—————**Secs. 622, 312, 310 and 588**—*No revision where an appeal lies.* An appeal lies against an order under sec. 312 Civil Procedure Code or one refusing to set aside a sale under sec. 310 A, Civil Procedure Code and no revision petition would lie to the High Court in the first instance.

Miller J.

Vemba Pillay v. Marudaya Pillay 4 M. L. T. 96.

—————**Sec. 623**—*Ground for review.* The ground for amending a decree on review must be something which existed at the date of the decree.

Wallis & Munro J. J.

U. R. M. U. M. Anuamalai Chattiari v. Subramania Iyay, 4 M. L. T. 86.

Common carriers Act (III of 1885) amended by Act X of 1899
sec. 10.—*Steam ship Company and Railway Company—Notice before suit.* Section 10 of the Common Carriers Act as amended by Act 10 of 1899 places a Steamship Company in the same position as a railway; and makes it obligatory upon a person wanting to sue a Steamer Company to give notice of such suit within the time mentioned in the section.

Mitra & Bell J. J.

Rivers Steam Navigation Co. Ltd. v. Kashi Prasad, 8 C. L. J. 192.

Contract Act, section 16—*Undue influence—Document executed when the executant was under arrest.* Held that the mortgage-deed executed by the defendant in satisfaction of a money-decree while he was under arrest is not void on the ground of undue influence for the mere fact of arrest of the defendant can not be held to establish undue influence. I. L. R. 4 All., 352 doubted.

Chatterji J.

Mulchand v. Inam Bakhsh, 9 P. L. R. 528.

Court Fees Act, sec. 7—*Court fee—Suit for possession under lease, whether it is a suit for specific performance.* A suit by the lessee of land comprised in a lease is not a suit for specific performance of the contract of lease and the Court-fee payable on the plaint is the same as in a suit for possession. But the memorandum of appeal must be stamped according to the value of the relief asked for, which may be the lease money.

Aikman J.

Ghulam Sabir v. Nartan Prasad, 5 A. L. J. 534.

—————**Sec. 7 (e) cl. IX p. Sch. I Art. I**—*applies to appeals*

in mortgage suit—Court fee payable on subject matter in dispute in appeal. Held that the Court fee in an appeal arising out of a suit for foreclosure is payable on the subject-matter in dispute in appeal and not on the principal money secured by the mortgage. *Aikman J.*

In the matter of the petition of Mahadeo Prasad, 5 A. L. J. 581.

———**Sec. 7 sub sec. V cls (a) and (d)—Revenue paying estate suit for possession of share in—Court fee on plaint—“Definite share” if must also be separately assessed with revenue.**—In a suit to recover possession of a definite share in a permanently settled revenue paying estate, the Court fee on the plaint should be calculated according to the first part of cl (a) of sec. 7 sub sec. V of the Court Fees Act (i. e.) at ten times the proportionate revenue annually payable, Whether such share is recorded in the collector's register as separately assessed with revenue or not does not matter.

The words “definite share” in the first part of the clause does not mean a definite share separately assessed with revenue.

Casperz, & Sharfuddin J. J.

Buniad Lal v. Shyum Lal 12 C. W. N. 990.

Court fee—Mortgage suit—compromise decree—appeal from order refusing to make order absolute—Transfer of Property act sec. 89—ad valorem Court fee.—Advalorem Court fee on the value of the appeal should be paid on the memorandum of appeal from an order refusing an application for an order absolute under Sec. 89 of the Transfer of Property Act.

Mitra & Casperz J. J.

Charu Chandra v. Bhagirath Persad 12 C. W. N. 1028.

Darkhast—Grant or land on—Grant good if made by competent authority, unless set aside on appeal—Omission to consult one whose opinion is not binding does not vitiate the grant.—A grant of land purporting to have been made under the darkhast rules by the officer empowered by the rules to make the grant is binding on the Crown unless it is revoked by an officer of a higher grade on appeal. The omission on the part of the officer making the grant to consult an authority whom he is directed to consult by an order of Government, which, however, does not make the opinion of such authority binding on him, is a mere irregularity which does not invalidate the grant.

Munro & Sankaran Nair J. J.

Hummade Beari v. Secretary of State for India 31 Mad., 264.

Declaration—Right to—Rights in property affected—Subsequent conduct of defaulter.—Where one of the shareholders of a property purported to mortgage the whole estate,

Held that the other shareholders had a right to the declaration that the defendant would not alienate their share and this, notwithstanding that subsequently to the suit the defaulter had paid off the mortgage debt.

Brett & Coase J. J.

Sonabhan Bibi v. Nathmal Keresi 8 C. L. J. 185.

Dekkhan Agriculturist's Relief act (XVII of 1879) Secs. 12-13
Usufructuary mortgage—Redemption—Accounts taken—Result of the account.—The provisions of s. 13 of the Dekkhan agriculturist's Relief Act 1879, are imperative. The amount due in a suit for redemption of a usufructuary mortgage in which the provisions of s. 12 of the Act have been complied with is the amount which is found to be due upon taking accounts in the manner provided by s. 13. It is not enough that the court could ascertain the consideration for the mortgage bond after an inquiry under s. 12 and then—proceed to pass a decree for the amount.

Scott C. J. & Heaton J.

Dadabhai Valli Abhram (10 Bom. L. R. 745).

Divorce Act (IV of 1869) secs. 14 and 50.—*Practice—Petition service of substituted service—Unreasonable delay.*—The practice of the Calcutta High Court as to service of petition on the Respondent is governed by what prevails in the Matrimonial Courts in England.

It is essential in suits for dissolution of marriage that the petition of the Plaintiff should be personally served under sec. 50 of the Indian Divorce Act on the Respondent or that sufficient notice of its contents should be given to him.

Unless satisfactory explanation is given for the long delay in presenting and prosecuting a petition, a court is obliged to refuse a decree for dissolution of marriage under sec. 14 of the Indian Divorce Act.

Fletcher J.

Arabella Clarressa Eliza Mitter v. John Charles Mitter 12

C. W. N. 1009.

Easement—Ancient Lights, Obstruction of—Infringement—Nuisance Acquiescence—Decree for damages—Mandatory injunction. An obstruction to light and air must amount to a nuisance, to be an actionable infringement. Where the whole of the direct light, which formerly came to the plaintiff's building, was taken away by the defendant's new building, it is no defence that the amount of the reflected light which now comes to the plaintiff's premises, is sufficient for the ordinary user thereof. Where there has been such a substantial diminution of light as to amount to a nuisance,

sance that the plaintiff's office has more light left than many other offices in Calcutta, or that the light coming to the plaintiff's premises is sufficient for business purposes, or that the plaintiff could by making alterations improve the light coming thereto, is not relevant. *Colls v. Home and Colonial Store, Limited*, (1904) A. C. 179, followed. Inasmuch as the plaintiff was shown the plans of the proposed new building in May 1907 and no proceedings were instituted, until the 27th september 1907, when the defendant's building had reached a height of 30 ft., and as on that date permission was given to the defendant to go on building at his own risk, and the defendant had nearly completed his building at a very large cost by the date of hearing of this suit in January 1908, when the building had reached a height of 70 ft., and as the plaintiff's building was a small old fashioned house, which in the ordinary course would in a few years be pulled down and rebuilt. *Held*, that the proper remedy would be a decree for damages and not a mandatory injunction to demolish the defendant's new building.

Fletcher J.

Anath Deb v. Gatstaun, 35 Calc. 661.

Ejectment suits—Proof of—in case of. The general rule of law is that when a suit is for possession and the cause of action is dispossession the plaintiff is bound to prove possession and dispossession within 12 years and the plaintiff must also show that he has a subsisting title which he has not lost by the prescriptive sections of the Limitation Act.

Hartnoll J.

Ma Pyu v. Ma Min Nu, 14 Bur. L. R. 200.

Evidence—Depositions—Admissibility—Presumption—Indian Merchant Shipping Act (V of 1883)—Preliminary enquiry—Statements not challenged. In the course of a preliminary enquiry, held under the Indian Merchant Shipping Act of 1883, to investigate into a collision, the defendant Company being represented by their attorney, certain officers of the defendant Company made certain statements on oath. *Held*, that the failure of the defendant Company to challenge the accuracy of these statements afforded a strong presumption that the imputations against the defendant Company therein contained were correct, and on this ground among others, the statements were admissible in evidence.

Woodroffe J.

Asiatic Steam Navigation Company v. Bengal Coal Company 35 Calc. 751.

—————**Proof of—Ejectment suit for—Nij-jote land, suit for possession of makarraridar—Occupancy raiyat—Plea of.** In a suit for ejectment from nij jote lands, where the defence set up a right of occupancy,

when the plaintiff was admitted to be a makarraridar of the landlord, it lies upon the defendants to make out that they are occupancy raiyats and are entitled to remain there.

Caspercz & Sharfuddin J. 7.

Baraik Kanul Sehi v. Lilhu Christian, 8 C. L. J. 170.

Executor—Also residuary legatee—mortgage by—Legatee's right to impeach—Legacy charged on immoveable property—Priority—Notice—Construction—Notice—Delay—Consent. A mortgage by an executor who is also residuary legatee to secure his private debt, though valid as against creditors, may be set aside even at the suit of a residuary legatee, for the nature of the claim of a legatee may be ascertained from the will whereas if a reasonable time has elapsed since the death of the testator and then the executor deals with the residue as his own the purchaser may in the absence of notice to the contrary, assume that the debts have been paid or that there are other assets for payment of the debts, if any.

When the mortgage was executed years after the time fixed in the Will for payment of the legacy and the legacy had remained unpaid the lapse of time was a circumstance that might be taken into consideration in determining whether the executor was acting with the consent of the legatee.

Held that in the circumstances of the present case the rights of the parties remained unaffected by the delay. P. C.

Bank of Bombay v. Suleman Somji, 12 C. W. N. 993.

General Clauses Act, (U. P.) S. 11—Execution of decree—Procedure—Lease of mohal executed by Collector after the coming into operation of the Agra Tenancy Act, 1901. Where proceedings in execution of a decree for rent had been commenced under Act No. XI of 1881, the granting of a lease of a mahal belonging to the judgment debtor was not invalid, though made after the coming into force of the Agra Tenancy Act, 1901, but was permitted by section 11 of the Local General Clauses Act of 1887.

Stanly C. J. & Banerji J.

Chulam Abbas v. Abdullah Khan, A. W. N. 1908, 219.

Grant.—Construction of—Forfeiture—Right of reentry.—I granted a miras taluk to his widowed daughter at a rent, for her life, and, on her death to her adopted son, if she adopted one, for life, and after him to his sons, grandsons &c., by right of inheritance in the male line, but without any power of alienating the property. In case the grantee adopted no son or her adopted son died without any heir in the male line the property was to revert to the grantor or his representative. It was also provided that the property could not be attached or sold for any debt incurred by the grantor

or her adopted son, grandson &c. In case of attachment or sale, it would be void and the property would come into the possession of the grantor or his representative. Held the grant did not create an absolute estate in the daughter. At the same time the grantor had no right to re-enter in case of a voluntary alienation. The right was limited to case of attachment or sale.

When therefore the grantee made a gift of the property to her adopted son. *Held* the gift was void, but the grantor or his representative could not obtain khas possession of the property. *Stephen & Holmwood J. J.*

Dharani Kanta Laheri Chaudhuri v. Shiba Sundari Debya, 8 C. L. J. 188.

Hindu Law—Adoption—Jains—Custom—Adoption of married man—Suit for declaration of invalidity of adoption—Burden of proof. *Held* that according to the law and custom prevailing amongst the Jain community a widow has power to adopt a son to her deceased husband without any special authority to that effect, when there are two widows the senior widow may adopt without the concurrence of the junior widow. A widow is also competent, with the consent of the *sapindas*, to give a son in adoption after the death of her husband.

Held also that, adoption being amongst the Jains a purely secular institution, there is no legal objection to the adoption of a married man. *Manohar Lall v. Banarsi Das*, 29 All. 495 followed.

Held also that where the plaintiff asks for a declaration that an alleged adoption is invalid, but cannot claim immediate possession by reason of the intervention of a widow's estate, the burden is still on him to make out a *prima facie* case that the adoption challenged by him is invalid in law or never took place in fact. *Stanley C. J. & Burkitt J.*

Asharfi Kumbar v. Rupchand, 30 All. 197.

—————***Alienation—Deed of sale of landes, suit to set aside—Ancestral lands—Onus—Proof—Conjectures.*** The plaintiffs who were minors brought the suit to set aside a deed of sale made by their father Dayal Singh to the appellants and certain other persons as purchasers on the ground that the lands, the subject-matter of the sale were in view of the Hindu Law ancestral and that the sale was not necessary and was for a fictitious consideration and in fraud of the rights of the plaintiff's father Dayalsingh, as next heir and reversioner on the death of the widow of Dhana Singh, the deceased owner. The only question in dispute on the appeal was whether the lands were ancestral.

There was really no evidence that the lands in question came to Dhana

Singh by descent at all. There was evidence that he acquired some lands in the district by purchase from the owner and there was a probability that he acquired others by the abandonment of other persons who might have been collateral, and in that way, might have become possessed of lands which by the custom of the Punjab would be regarded as ancestral. But there was no evidence defining the boundaries of those portions of land respectively.

Held that it was through their father, as heirs of Dhana Singh by descent from a lineal male ancestor in the male line through whom the plaintiff also in like manner claim; they were not deemed ancestral in Hindu Law.

Held also that when the onus lay as it did in the present case, on the plaintiffs in seeking to set aside on such grounds a solemn deed executed by their father, conjectures could not be accepted as a substitute for proof and that the plaintiffs failed to prove their case. P. C.

Atar Singh v. Thakar Singh, 10 Bom. L. R. 790.

—————**Inheritance**—*Dayabhaga*—*Spiritual efficacy, doctrine of, discussed*—*Propinquity*—*Affection*—*Natural justice*—*Mitakshara, principle of, applicable, where Dayabhaga silent*—*Reunion*.—Mere spiritual benefit is not always the guiding principle of inheritance under the Bengal school of a Hindu law. Propinquity has also been accepted in the Bengal school as a principle of succession. In cases not contemplated by Jimutavahana or his followers, the law should be interpreted on rational lines consistently with the principles followed in similar cases, and the decisions of our Courts should not be based on a blind adherence to the principle of spiritual efficacy, as it may lead to the violation of other recognised principles consistent with natural justice. In all cases of absence of any express texts or precedents under the Dayabhaga law, courts should have recourse to the theory of propinquity and natural love and affection, as adopted by Vijñaneswara and the commentators of the more ancient and orthodox schools of Hindu law. *Mitra J.*

Alishay Chandra v. Hari Das 35 Cal. 721.

—————**Joint family property**—*Release by a co-parcener*—*Right of the co-parceners son then in existence to recover his share in the family property*—*Right of an after born son in the property*. M one of the co-parceners in a joint Hindu family consisting of his brothers and father gave a release of his share in the family property in consideration of his receiving a certain sum of money. M had a son born to him before the date of the release. The son then sued the co-parcenary to recover by partition his

share in the family property and it was awarded to him after the dates of the release and of the partition decree. M had a second son born to him. This second son then sued the first son to recover his moiety of the ancestral property that had fallen to the latter's share.

Held that the second son was not entitled to any share in the property.

Knight J.

Shivajirao Madhavrao v. Vasantrao Madhavrao, 10 Bom. L. R. 778.

———**Maintenance**—*Widow having fund from her husband's estate to maintain her for five years—Suit for arrears of maintenance premature.* The plaintiff filed a suit in February 1904, to recover her arrears of maintenance; at that time she was in possession of a fund belonging to her husband's family estate, which fund was sufficient to provide to her maintenance for five years at the rate allowed by the Court.

Held that no cause of action had accrued to the plaintiff. In 1904, the Court was not in a position to forecast events or to anticipate the position of affairs five years later in other words, it was not in a position to make a decree for maintenance and no liability to provide maintenance could in the then existing circumstances attach to the appellant.

Batchelor & Chaubal J. J.

Dattatraya Waman v. Rukhmabai Pandurang, 10 Bom. L. R. 770.

———**Reunion**—*What is*—Reunion, the Sanskrit word being *samerista*, implies a state of union or jointness, a partition and a subsequent state of jointness amongst co-parceners by mutual consent and through affection, and one, who is never joint, cannot afterwards be said to be re-united or *samerist*. *Balabux v. Rukhmabai*, 30 Calc. 725, L. R. 30 I. A. 130, followed.

Mitra J.

Akshay Chandra Bhattacharya v. Hari Das Goswami, 35 Calc. 721.

———**Self acquisition**—*Presumption*.—Where a Hindu makes over his property to his grandson by a deed of gift in which the property is described as his self-acquired property and his son appends his attestatain to the deed, held, that the inference was clear that the property was a self-acquisition of the donor.

Batchelor & Chaubal J. J.

Kalianji v. Bejanji 10 Bom. L. R. 754.

———**Stridhan**.—*Pitridatta—ayautuka succession to Ayautuka stridhan*—*Dayabhaga Chap. IV sec. II para 16—Kanya meaning of sons or married daughters preferable heirs.*—Per *Brett and Mitra J. J.* (Cox J. dissentiente.) The sons succeed in preference to married daughters to ayautuka stridhan property received by a woman from her father after marriage.

The word "Kanya" in Dayabhaga Chapter IV Section II paragraph 16 is confined to unmarried daughters alone.

The Dayabhaga of Jimuta Vahana is paramount authority in the Bengal School; other authorities may be followed, if there be any ambiguity in Jimuta Vahana's text. Srikrishna and Raghu Nandana deserve the greatest respect, but their opinions must yield to the authority of Jimuta Vahana.

Per Brett L. (Coxe J. dissentiente) The Dayabhaga lays down a general law of succession to Ayautuka stridhan and makes an exception in the case of such property received from a father only to the extent that in the first instance unmarried daughter is preferred to the son.

Per Mitra J. The later opinions of Srikrishna and Raghu Nandana which are not based on the text of the Dayabhaga ought not to be followed by the Courts of Bengal.

Brett, Mitra & Coxe J. J.

Prosunna Kumar Bose v. Sarat Sashi Ghose. 8 C. L. J. 200 = 12 C. W. N. 924.

—————**Succession—Illegitimate daughter—Shudra.** Under Hindu Law the illegitimate daughter of a Shudra is not entitled to inherit in preference to the son of a divided brother.

Batchelor & Choubal J. J.

Bhikhya Sakham v. Babu Vedu Tell, 10 Bom. L. R. 736.

—————**Widow.**—*Widow in possession of husband's estate as inferior proprietor—Effect of enlargement of estate of inferior proprietor by action of Government—Mukaddam.* An under-proprietor, whose status was described by the term "mukaddam" died, and his estate devolved upon his widow. Whilst this estate was in the possession of the widow, the Government proceeded to make a settlement with the mukaddams, excluding the superior proprietor, to whom an allowance by way of malikana was given. *Held* that the enlarged estate of which the widow thus became possessed was still a Hindu widow's estate merely: the action of Government had not the effect of making her a zamindar with a title independent of that which she derived from her husband.

Stanley C. J. & Bannerji J.

Kashi Prasud v. Inda Kunwar, A. W. N., 1908, 222.

—————**Will—Constitution of—Res judicata—Partition by sons** "shall divide my properties among my sons in equal shares." if departure as gift—*Mother's share how far affected by shares otherwise inherited by her—Estimating mother's share—Stridhan from her husband's estate, credit for—Form of.* The decision in a former suit of questions not absolutely necessary for the determination of that suit cannot be regarded as *res judicata* between the same parties in a later suit.

If there be an express gift to the sons by a Will of all the testator's properties, his widow's right to share on partition by the sons is defeated.

The direction in a Will—"on my youngest son.....attaining the age of 21 years the said executors shall divide my properties among my sons in equal shares" was construed not to operate as an express gift in favour of the sons but only to postpone partition to a particular date.

When a Hindu mother is otherwise entitled to a share in lieu of her maintenance on the partition of the father's estate by the sons, her right is not affected by the fact that she has already inherited a share of the same estate from one of her deceased sons.

In estimating the share which a mother is entitled to in lieu of her maintenance out of the father's estate, credit must be given for any property she has received as stridhan from the father's estate.

Mitter J.

Poorendra Nath Sen v. Srimati Hemangini Dassee, 12 C.W.N.1002.

Interest Act, (23 of 1839)—*Interest not claimable where no agreement and no demand in writing—Hindu Law not applicable in cases of payment of interest.* Interest is not claimable where there is no agreement to pay interest and no demand in writing so as to bring the case within the provisions of the Interest Act. Hindu Law does not apply in such matters as the payment of interest and the rule of law above stated applies in cases in which the parties are Hindus. *Saunadanrppa v. Shimbawari*, 31 Bom. 354, not followed. *Anaji Rao v. Ragu Bai*, 6 M. H. C. R. 400, followed.

Wallis & Shankaran Nair, J. J.

Subramania Aiyar v. Subramania Aiyar, 31 Mad. 250 = 4 M.L.T. 787.

Judicial Officers Protection Act (18 of 1850), S. 1—*Judicial Acts.* If there are no proceedings before him, a Magistrate cannot be said to be acting as a "Court" within the meaning of S. 94 of the Code of Criminal Procedure and cannot therefore direct a search to be made in his presence pursuant to S. 105 of the Code. S. 165 of the Code of Criminal Procedure does not authorise a search for the purpose of discovering arms generally. A Magistrate when he is conducting a search for the discovery of arms cannot be held to be "acting judicially within the meaning of the Judicial Officer's Protection Act.

The *bona fides* of a Magistrate in conducting a search does not release him from the obligations the law casts upon him; while having regard to his *bona fides* his conduct may not be such as the damages to be awarded for trespass should be exemplary yet they ought to be substantial and not purely nominal.

Fletcher J.

Brajendra Kishore Rai v. L. O. Clarke, 12 C. W. N. 974.

Jurisdiction—Power of Court to correct its own mistake—Inherent power—Amendment of sale certificate—Sale certificate including a property not sold—Civil Procedure Code, S. 244. A Court committing a blunder has power to rectify its mistake of its own motion.

Where two properties were advertised for sale and one property was sold but the sale certificate included both the properties and the purchaser got possession of both.

Held, that the Court had inherent power to rectify the mistake by amending the sale certificate and to direct that the delivery of possession of the second property be cancelled.

That the matter would also come under S. 244, C. P. Code, the question being one between the decreeholder and the judgment-debtor and relating to the satisfaction or discharge of the decree. *Mitra & Caspersz J. J.*

Govinda v. Abhoy Charan, 12 C. W. N. 1027.

—————**Proclamation—Change of jurisdiction—Sambalpoore—High Court to entertain appeal—Authority of the Governor-General in Council to transfer a territory to the jurisdiction of the High Court, from that which was not under the jurisdiction of a High Court—Proclamation under Statute 28 and 29 Vict. Chap. 15.** *Held*, that the Proclamation No. 2833, issued by the Governor-General in Council on the 1st September 1905, which declared and appointed that the district of Sambalpoore should cease to form part of the Central Provinces and should be subject to and be included within the limits of the Bengal Division of the Presidency of Fort William, was not *ultra vires*.

Held also, that the Governor-General in Council had authority under Statute 28 and 29 Vict. Ch. 15 to issue this proclamation, so as to transfer a portion of the territory originally comprised within the jurisdiction of the Court of the Judicial Commissioner of the Central Provinces, and place it within the jurisdiction of the Court. *Stephen & Mookerji J. J.*

Baleshwar Bagarti v. Bhagirathi Dass, 35 Cal. 701.

Land Acquisition Act.—Objection—Reference—Party-jurisdiction of Court.—A Court has no jurisdiction to deal with objections except those which were made by persons who were parties to the proceedings before the collector and which brought about the reference.

Maclean C. J. & Doss J.

Prabal Chandra Mukerji v. Raja Peary Mohun Mukherjee 12 C. W. N. 987.

—————**Secs. 32, 54—Compensation money paid to Hindu**

widow Reversioner's application for reference—Order by Judge on reference directing refund—appeal—Revision—Civil Procedure Code Sec. 622. Where a Land Acquisition Collector having awarded a certain sum as compensation for land acquired, paid it to, amongst others, a Hindu widow and almost six months after the award her daughter asked for a reference to the Civil Court, and a reference having been made, the Judge ordered the lady to repay the amount withdrawn by her and the same to be dealt with according to the provisions of sec. 32 of the Land Acquisition act.

Held—That until money was deposited in Court by the Collector, the Court could not proceed to deal with it under Sec. 32.

That the Judge had no power to direct a refund of money already paid by the Collector.

That the order was not one under Sec. 32, Land Acquisition act, as the Judge was not in a position to make such an order and so no appeal lay from it and the High Court could properly interfere under sec. 622 Civil Procedure Code.

Coxe & Bell J. J.

Gobindo Rani v. Brinda Rani 12 C. W. N. 1039.

Landlord and Tenant—Notice determining tenancy—Denial of landlord's title after suit does not render previous notice unnecessary. A tenant is entitled to reasonable notice before ejectment, and fifteen days notice to a cultivating tenant in the middle of the cultivating season is not sufficient notice. A landlord in a suit for ejectment against a tenant is bound to prove a complete cause of action when the suit was instituted, and the tenant, who for the first time denies the landlord's title in his written statement, is not by such denial disentitled to set up want of proper notice before the institution of the suit. *Abdlula Naha v. Moidin Kutti*, 17 M. L. J., 287 not followed. *Unhamma Devi v. Vaikunta Hegde*, 17 Mad., 218 followed.

Wallis & Munro J. J.

Peria Karruppan v. Subramania Chetty, 31 Mad., 161.

———**Sale of tenant's crop for default of landlord—Balance—Benefit of Presumption.** Where the defendant's crops were attached by reason of the plaintiff's landlord's default and more crops were sold than were needed to satisfy the amount of rent in arrears.

Held that in the absence of the evidence it must be presumed that the landlord had the benefit of the balance and that he is accountable to the defendant therefor.

White C. J. & Sankaran Nair J.

Rangasami Naicker v. V. N. Saminada Pandaram, 4 M. L. T., 65.

———**Lessor and lessee—Contract of lease—Suit for specific performance—Suit or possession of immoveable property.** Where the lessors con-

tracted to give possession to the lessees, but did not do so, and the lessees brought a suit for possession, more than three years afterwards, held that the suit was one for the specific performance of the contract and was governed by article 113 and not article 114, Schedule II of Limitation Act and the suit was barred by time.

Aikman & Karamat Hussin J.

Charna v. Banslal, 5 A. L. J. 529.

Light and Air—*Easement non-user of, how far a release.—Transfer of dominant tenement—alienation of easement after attachment—Code of Civil Procedure Sec. 276—License—Damage Mandatory injunction.*—The non-user of an easement is not an implied release of it, and the transfer of the dominant tenement carries with it the easement which then existed, although in suspense for the time being.

The easement of light and air falls within the definition of immoveable property and can be extinguished by the dominant owner releasing it expressly or impliedly to the servient owner.

If an easement enjoyed by the dominant tenement is expressly released after the latter is attached under a decree, it is an alienation of a portion of that property within the meaning of sec. 276 of the Code of Civil Procedure and the transaction will be void.

Mere blocking up of the apertures of ancient windows would not necessarily amount to an abandonment of rights of easement.

Chitty J.

Krishna Dhona Mitter v. Nandaranes Dassie 12 C. W. N. 969.

Limitation—*Acknowledgment—Execution of muchilika by tenant.* The execution of *amuchilika* by the tenant operates as an acknowledgment of the rent due and an admission of the landlord through his pleader that the claim was barred being contrary to the facts is not binding upon the landlord.

Benson & Sankaran Nair J. J.

Kajana Ranga Raw v. Venkatarama Iyer, 4 M. L. T. 83.

———**S. 14.**—*Libel, suit for—Misjoinder of causes of action—Misjoinder of parties—Election—Limitation—"Cause of a like nature"*—Six persons, on the 26th January 1906, instituted a suit jointly against an editor and proprietor of a newspaper for libels published on the 17th and 20th July 1905 and claimed an aggregate sum as damages. The suit was, on the 22nd April 1907, held to be bad for misjoinder of parties and causes of action, but the Court gave the plaintiffs leave to elect, which of their number should continue the suit, and the other co-plaintiffs' names were struck out. Subsequently, on the 1st May 1907, one of the former plaintiffs filed a suit for libel and damages, and it was contended that his suit was barred by

limitation. *Held*, that section 14 of the Limitation Act was not intended to apply to a case, in which a first suit failed entirely through the negligence and laches of the plaintiff himself, and that an improper joinder of parties or of causes of action would not be "a cause of like nature" within the meaning of section 14 of the Limitation Act, and therefore the plaintiff's suit was barred by limitation. *Maclean C. J. Harrington & Fletcher J. J.*

India Publishers, Limited v. Aldridge, 35 Calc. 728.

—————**S. 19—Suit for redemption of mortgage—Limitation—Acknowledgment of mortgagor's right to redeem.**—*Held* that an order that an acknowledgment by a mortgagee of the mortgagor's right to redeem should be a good acknowledgment within the meaning of section 19 of the Limitation Act, for the purpose of saving limitation it is not necessary that such acknowledgment should be addressed specially to the mortgagor. *Mylapore v. Yeokay* 14 Calc., 801) and *Imam Ali v. Baijnath Ram Sahu* 33 Calc., 618 not followed.

Karmat Husain J.

Lachhmi Chand v. Allah Dia, A. W. N., 1908. 226.

—————**S. 13 and 14—Civil Procedure Code Sec. 332. Suit under S. 332, brought more than a year after the order passed under the section not barred.**—On the 21st November 1900 an order was passed under S. 332 of the Civil Procedure Code, awarding possession of certain property to defendants. The plaintiffs filed this suit on the 25th August 1905 under S. 332 of the Code, to recover possession of the property from defendants. The suit was dismissed as having been barred under Art. 14 of the Limitation Act.

Held (1) that the suit was not barred under Art 14 of the Limitation Act 1877. An order passed by a Judge under S. 332 of the Civil Procedure Code 1882, is not such an act or order as is referred to in Art 14 A Judge exercising his judicial functions is a Civil Court within the meaning of the Limitation act and is not an officer of Government acting in his official capacity within the meaning of Article 14.

Held (2) that article 13 of the Act also did not apply to the case because an order passed under S. 332 restoring possession which has been given in execution of a decree, is an order made by the court in execution proceedings and is not an order of a Civil Court in a proceeding other than a suit.

Scott C. J. & Heaton J.

Govinda Bala v. Ganu Abaji 10 Bom. L. R. 749.

—————**Art. 49—Government promissory notes held by Defendant for plaintiff—Wrongful disposal of notes—Pledge—subsequent demand and refusal Wrongful detention when commences.**—The defendant who held

certain Government promissory notes in trust for the Plaintiff, pledged the same for his own purposes and later on when asked by the Plaintiff refused to deliver them up.

Held—That a suit by the Plaintiff to recover the notes or their value from the Defendant was governed by Art. 49 of Sch. II of the Limitation Act and time commenced running from the date of refusal, notwithstanding that the defendant had wrongfully parted with the notes before that date.

The detention of the notes became wrongful from the date of refusal to deliver them up.

Coxe & Does J. J.

Gopal Chandra Bose z. Surendranath Dutt. 12 C. W. N. 1010.

———Arts. 62, 95, 97—*Suit to recover money obtained by deceitful misrepresentation does not fall within art. 62 or 97, but within art. 95—Starting point of limitation.*—A, by fraudulently representing to B, to whom he was indebted that a sum of money was due to A from C, induced B to take an assignment of the alleged debt due from C in satisfaction of the debt due from A to B. In a suit by B as assignee, against C, the latter in his written statement denied the existence of any debt due to A, and B's suit was dismissed after trial on the ground that C owed nothing to A. In a suit by B to recover from A damages on the ground that A had, by deceitful representations, induced B to take the assignment: *Held*, that the suit as regards limitation did not fall within article 95, and that the fraud must be held to have been discovered only when the Court found that no debt was due from C to A and not when C in the written statement denied the existence of any such debt. When it is uncertain when the fraud was discovered, the onus is on the defendant to show that the suit is out of time.

Wallis & Sankara Nair J. J.

Moidiyan's son Punnayil Kuttu v. Raman Nair 31 Mad., 230 = 4 M. L. T. 80.

———Art. 85—*Acknowledgment signature of accounts.*—Where the defendant signed the plaintiff's accounts and subsequently acted as though the signature referred to the whole amount.

Held that the court was justified in treating the signature as applying to the whole amount due under the accounts.

The signature of the defendant in the Plaintiff's account is a sufficient acknowledgment to save limitation and art 85 of the 2nd Schedule to the Limitation act was rightly applied.

Wallis J.

Pubjuntla Ramchandrayya v. Dintamsetti Narayana Chetty 4 M. L. T. 77

—————**Art. 116.**—*Contract in writing registered—Contract signed by only one party, but acted on by both—Covenant—Remote consequence of breach of Contract—Damage.* A contract, which has, in fact, been registered is no less a “contract, in writing registered” within the meaning of Article 116 of the Limitation Act, because it bears the signature of only one of the parties, in the absence of any statutory provision regarding the signatures. *Ambalavana Pandaram v. Vaguran*, 19 Mad. 52, *Kotappa v. Vallur Zamindar*, 25 Mad. 50, *Zamindar of Vizianagram v. Behera Suryanarayana Patrule*, 25 Mad., 587 followed. *Apaji Bapuji Karjupi v. Nilikantha Annaji*, 3 Bom. L. R. 667. not followed. Where there is no agreement between the lessor and the lessee that the lessee was to pay to the superior landlords the rent, which the lessors were bound to pay to them under their contract with the superior landlords, and owing to the failure of the lessee to pay the rent, the leased property was sold. Held, that the loss of the property was not the natural consequence of the default of the lessee to comply with his covenant and the lessors are only entitled to compensation for any loss or damage, which naturally arose in the usual course of things for the breach of the contract.

Maclean C. J. & Doss J.

Girish Ohandra Das v. Kunja Behari Malo, 35 Calc. 688.

—————**article 148**—*Adverse possession—Immoveable property—Right to Birt—Exclusive enjoyment by mortgagee.* The right of a Hindu to birt is in the nature of immoveable property and article 148 of the second schedule of the Limitation Act governs a suit for redemption of a mortgage thereof.

Section 28 of the Limitation Act is applicable to a claim to a mortgagee's right to birt, such right being on the footing of a mortgage of immoveable property. Exclusive adverse enjoyment of birt by the mortgagee or his representatives for more than twelve years extinguishes the right of person claiming a share to the mortgage money in a suit for redemption.

Reid J.

Mohan Lal v. Janki, and Jowali, 9 P. L. R. 533.

—————**Art. 178**—*Date of confirmation of sale—Starting of Limitation for execution.* Section 316 of the Civil Procedure Code provides that the certificate of sale is to bear the date of the confirmation of sale and it must be deemed to have been granted on the date which it bears. Although the grant of a certificate is a necessary preliminary to an application under section 318 such an application will be barred by limitation under article 178 of the Limitation Act if not made within three years of

the date which the certificate bears, that is, the date of the confirmation of the sale.

Aikman & Griffin J. J.

Ranjit Singh v. Baldeo Singh, 4 A. L. J. 576.

—————**Art. 179—Execution of decree—Application—continuation of previous proceedings in execution.** On the 7th December 1903, the sale of certain immovable property, which had been attached was ordered. On the 30th January 1904, the Amin reported that he had been unable to hold the sale, as there were no bidders. Notice of this fact was given to the decree-holder and he was allowed time till the 10th February to pay in fees for a fresh sale. On that date, no steps having been taken by the decree-holder, that case was ordered to be struck off "for the present." On the 13th January 1906 the decree-holder again applied asking that the property, which was still under attachment, might be sold. *Held* that this was not a fresh application in execution, but merely an application to revive the former proceedings, and was not barred by limitation. *Dukhiram Srimani v. Jogendra Chandra Sen* (5 C. W. N. 347) distinguished. *Stanly C. J. & Bannerji J.*

Mujib-Umed v. Umed Bibi, A. W. N., 1108, 227.

—————**Act, 179, cl. (4)—Civil Procedure Code, s. 232—Application by transferee decree-holder to be recognized as such is a step in aid of execution in accordance with law.** An application purporting to be under section 232, Civil Procedure Code, by the transferee of a decree, praying to be recognised as assignee of plaintiff in the suit and, stating that when so recognised, he would file an execution petition, i. e. when the Court passed an order as prayed for, and the defendant does not appeal against such order, is a step in aid of execution, and an application in accordance with law within the meaning of article 179, clause (4) of the Limitation Act. *Wallis & Sankara Nair J. J.*

annamalai Mudaliyar v. Ramier, 31 Mad., 234=4 M. L. T. 72.

—————**Art. 179 clause 5—Decree—Execution—Application for execution—Code of Civil Procedure, sec. 248—Notice, date of the order.** The date of issuing a notice under sec. 248 of Civil Procedure Code is the date on which the Court orders the issue of notice and not the date on which the notice is actually issued. The limitation therefore under article 179, clause 5 of the Limitation Act runs from the former date.

Aikman & Karamat Husain J.

Jumai Kanjar v. Abdul Karim Khan, 5 A. L. J. 524.

—————**Art. 179—Application for time, 'step in aid of execution**

previous application barred, notice on judgment debtor—Estoppel. An application for time is not a step in aid of execution and does not present subsequent applications from being barred. A judgment-debtor is not estopped from contending that a previous application for execution was barred by limitation merely because notice had been served on him and he did not appear to contest the proceedings.

Stephen & Holmwood J. J.

Umed Ali v. Abdul Karim, 8 C. L. J. 193.

Lunatic Act (XXXIV of 1858)—*Remuneration to a committee—Court's jurisdiction to pass the order—Next of kin of lunatic not entitled to be heard on the application—Lunatic when sane can impeach the order.* The Court has a discretionary power to allow a committee of a lunatic, appointed under Act XXXIV of 1858 remuneration, but will only allow it under special circumstances. When some relation or friend of the lunatic can be found who is willing to act as committee the court will not as a rule allow remuneration to such a person, but when no such person can be found and an official of the Court has to be appointed the Court will exercise its discretion and allow remuneration.

On an application for remuneration by a committee of a lunatic, the next of kin of the lunatic have no right to be heard in their own interests as they have no vested interest in the estate. But a lunatic if he becomes of sound mind, has the right to impeach any order which he considers has been made without regard to his interest, and he can impeach order for remuneration even after the committee has passed his account. This right devolves on the lunatic's death upon his heirs. *MacLeod J.*

Mulji Damodar v. Bomanji Mancherji, 10 Bom. L. R. 772.

Mahomedan Law.—*Dower—Relinquishment—Acceptance by the heirs.* Under Mahomedan Law the remission of dower by a widow without acceptance by the heirs of her husband is effective.

It is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. *Scott C. J.*

Jyanibegam Fakiraddin v. Umrao Begam, 10 Bom. L. R. 764.

———**Gift—Hiba bil mushaa—Possession.** Held, that what is known to Muhammadean law as a *hiba bil mushaa*, or gift of an undivided joint property, is a valid gift if the donee obtains possession.

Mohib ullah v. Abdul Khalik, 30 All. 250

———**Lunatic—Guardian de facto—Sale of lunatic's property by mother and wife for benefit of lunatic.** The mother and

wife of a lunatic Muhammadan acting *de facto* as the guardians of the lunatic, sold certain property belonging to the lunatic in order to discharge debts due by him. *Held*, that the transaction could not be impeached, although the mother was not under the Muhammadan law the legal guardian of the lunatic. *Mafazzal Hosain v. Basid Sheikh* 34 Calc., 36 *Ramcharan v. Anukul Ohandra Acharjya* 34 Calc., 65) and *Majidan v. mam Narain* 26 All., 22 followed. *Stanley C. J. & Bannerji J.*

Ummi Begam v. Kesho Das, A. W. N., 1908, 220.

—————**Pre-emption.**—*Shafi Khaleet*—*Partner in the appendages*—*Nature of right*—*Common servient tenant between property of vendee and property in dispute.* Plaintiff pre-emptor and defendant No. 2 vendor, were brothers. Defendant vendor sold to defendant No. 1 a neighbour, two houses adjacent to each other, and between the female apartments of which and the house of the plaintiff, was a passage for the use of the inmates. Plaintiff sued for pre-emption as neighbour and *shafi khaleet*. The defence was that the plaintiff had no right of pre-emption in preference to that of the vendee who was a neighbour and *shafi khaleet*, in as much as the water from the privy of his house passed through the land of a third person over which land the water from the roof and parnalas of the houses in dispute also fell.

Held that under the Mahomedan Law, the right of the defendant vendee over the land of the third person was a totally different right from that the defendant vendor had over the same land. The defendant vendee was not a participator in any sense either in the property sold or in any of its or appendages.

Burkitt & Richards J. J.

Musharrafaali v. Shankat Ali, 5 A. L. J. 599.

—————**Will**—*Bequest for charitable purposes.* A Will executed by a Mahomedan authorising executors "to spend the money for such charitable objects as they think proper, or shall give it to whomsoever, I direct, or use it in such a way after my death that I may obtain eternal bliss."

Held that the bequest was invalid and no effect could be given to it.

Robertson & Lalchand J. J.

Shahabuddin v. Sohanlal, 9 P. L. R. 547.

Marumakkattayam Law—*Gift by woman governed by such law, effect of.* A gift of property to a woman governed by Marumakkattayam law and to her children, by their father does not of itself constitute the mother and her children a separate tarwad, but the donees take such property with the incidents of tarwad property. Where the gift is made by a Muhammadan husband governed by Marumakkattayam law, to his wife and to her children the property becomes the exclusive property of the

donees with the incidents of tarwad property subject to Marumakkattayam law, and on the death of the mother does not pass to her heirs under the muhammadian law.

Pattatheruwath Pathumma v. Mannamkunnilyil Abdulla Haji 31 Mad., 228. = Mad., L. T. 82.

Marmat Grant—*Not an under-proprietary Right*—*Rent Act Oudh s. 3.*) *Held*, that a morwat grant is not an under-proprietary holding as defined in the Oudh Rent Act. Evans J. C.

Swami Dayal v. Lachmin Koer (11 Q. C. 240)

Mesne profits—*Suit for—Limitation Act, arts. 109, 120—Applicability of “when the profits are received” in art. 109—Meaning of.* Where the defendants wrongfully received profits which were actually receivable by the plaintiff but for an illegal patni sale which was afterwards set aside, the period of limitation is three years from the time when the profits were received.

By the clause “where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession” in the third column of article 109, the Legislature limits the conditions under which the ordinary rule of three years may be extended.

The clause “when the profits are received” in the third column of article 109 means when the profits are actually received.

Mitra & Bell J. J.

Peary Mohun Roy v. Khelaram Sarkar, 8 C. L. J. 181.

Mortgage—Subrogation—Payment of Mortgage amount by vendee whose title has been subsequently found invalid. A vendee who while in possession of the property purchased, paid off a mortgage on the same but whose purchase was subsequently held invalid is entitled to be reimbursed with the amount paid by him in discharge of the mortgage.

Wallis & Munro J. J.

Beama Swami v. Padala Ananda, 18 Mad. L. J. 306.

———**decree, form of—Interest, rate of—Suit by puisne mortgagees for redemption after decrees previously obtained by prior mortgagees without impleading puisne mortgagees.** A prior mortgagee brought a suit for sale, obtain a decree, and purchased the properties himself. The prior mortgagee was not aware of a second mortgage on the property and consequently did not implead the puisne mortgagee. *Held*, that in a suit for redemption by the puisne mortgagee, the prior mortgagee should be allowed interest on the mortgage amount at the contract rate up to the date fixed in the decree for redemption. The prior decree obtained by the

prior mortgagee can only operate as between the parties to the suit and those who claim under them; and it would be unjust if the puisne mortgagee is allowed to use the prior decree to cut down the prior mortgagee of her interest, while he deprives her of the whole advantage of it. *Umes Ohunder Sircar v. Zahur Fatima*, 18 Cal, 164, explained and followed.

Semble, the equitable considerations which appear to have prevailed with the Judges in *Gangadas v. Jogendra Nath Mitter*, 1907, 11 C. W. N. 403 are applicable only to a case where the prior mortgagee has omitted to implead the puisne mortgagee with knowledge of his existence.

White C. J. & Miller J.

Thenappa Chattiari v. Marimuthu, 18 M. L. J. 355.

———*Form of—Suit by puisne mortgagee for sale subject to the prior mortgage.* It is the right of the prior mortgagee to require the second mortgagee to redeem him or submit to a sale of whatever interest he holds in the property and the decree must give effect to this right, unless by doing so it unnecessarily deprives the puisne mortgagee of any right of his own.

A puisne mortgagee cannot by impleading the prior mortgagee in a suit for sale insist on a decree for sale subject to the prior mortgagee.

Ordinarily in a mortgage suit when all the interested parties are before the Court, it is the duty of the Court, if it can do so, to make a decree which shall deal finally with the questions between them and shall preclude the necessity of further litigation for the enforcement of any right arising out of the mortgage or mortgages in question in the suit.

The proper decree to be passed in a suit by the puisne mortgagee when the prior mortgage debt was due on the date of suit, is to allow him to redeem the prior mortgage and sell the estate for both his amount and the redemption amount.

If the mortgage debt was not due on the date of suit, the puisne mortgagee can obtain a decree for sale subject to the prior mortgage.

The puisne mortgagee is bound to pay the whole amount, due under the prior mortgage and not merely the amount paid by the mortgagee thereof. S. 96, T. P. Act does not imply that the puisne mortgagee is not required to redeem the prior mortgage when the latter is a party to the suit.

Semble—S. 96, T. P. Act is intended to cover cases in which the prior mortgagee is not a party to the suit but intervenes after the decree.

White C. J. & Miller J.

Gangajam Venkataramana Iyer v. Henry James Colly Gompersz,
18 M. L. J. 298.

———*Interest on—Rate fixed by Court in suit by prior mortgagee not binding in a subsequent suit by puisne mortgagee to redeem.* When in a suit by a prior mortgagee a decree for sale is passed which fixes the rate of interest after the date for redemption, the rate so fixed is not binding as between the prior mortgagee and a puisne mortgagee, who was not made party to the suit. In a suit by such puisne mortgagee, for redemption against the prior mortgagee, the mortgagee will be considered as subsisting and interest will be awarded on the footing of the mortgage without reference to the decree in the prior suit. *Umes Chunder Sircar v. Zahur Fatima* (18 Cal., 164), followed. *Gangadas Bhutter v. Jogendra Nath Mitter*, (11 C. W. N., 403.)

White C. J. & Miller J.

Tenappa Othtitar v. Marimuthu Nadan, 21 Mad., 258.

———*Construction of deed—Redemption before the expiry of the fixed period.* Held on the construction of the deed in the case, that the relation between them should be that of the mortgagor and mortgagee and that the plaintiff was entitled to redeem the mortgage even before the expiration of the fixed term. *Batchelor & Chaubul J. J.*

Mahamed Muse v. Bagas Amanji Umas, 10 Bom. L. R. 742.

———*Redemption, right of—Mortgage—purchase by prior and puisne mortgagees—Accounting tenants settled on the land by prior mortgagee—Right of.* When the prior mortgagee purchased the property mortgaged to him in a suit in which the puisne mortgagee was not made a party and the latter also purchased the same property subsequently in a suit in which the prior mortgagee was made a party.

Held, that each party should be entitled to redeem the other, but the preferable right to redeem was with the puisne mortgagee. The puisne mortgagee is bound to pay the mortgage money with interest at the rate specified in the mortgage to the prior mortgagee in possession for the protection of the property or for redeeming any prior mortgage with interest as also the costs of the suit and appeal as in any ordinary redemption suit. An account was to be taken at the amounts realised from the property by the prior mortgagee as mortgagee in possession from the date of the possession taken by him (prior mortgagee). If on taking any accounts any balance be found in favour of puisne mortgagee the prior mortgagee will be found to pay the said amount to him, but if otherwise then the usual decree in redemption suit will be passed.

The tenants settled by the prior mortgagee on the land are entitled to remain on the land until it be found in any subsequent suit or suits that they are liable to ejection under the Bengal Tenancy Act or any other that may be in force.

Mitra & Bell J. J.

Kadar Prosanna Lahiri v. Girindra Prosad Sukul, 8 C. L. J. 173.

Mutwalli—*Whether infant can be appointed—Waiver, Civil Procedure Code, sec. 44 (a) leave under.* The power to appoint a mutwalli is a power in the nature of a trust. The power to appoint a new mutwalli stands on the same ground as the power to appoint new trustees in England. In a suit by a purchaser for a declaratory decree where a wakf is set up by the defendant who claims the land as the mutwalli but fails to establish his title if the plaintiff has made out a prima facie title, he is entitled to a declaration of his title and an injunction.

Section 442^(a) of the Civil Procedure Code substantially follows one of the rules (O. XVIII, r. 5) of the Supreme Court in England and was intended for the protection of the defendant. The defendant may by his conduct waive the benefit of that rule. *Fletcher J.*

Satesh Chandra Mullick v. Ashruffudin, 8 C. L. J. 196.

Negligence,—*Use of another's pony—Death of pony—Trespass.* Plaintiff-respondent alleged that defendant-applicant without his permission took and used a pony of plaintiff respondents' whereby it became ill and finally died. Defendant-applicant's defence was that the pony did not become by reason of riding it, but died because plaintiff-respondent rode it a long distance in the sun.

Held that assuming that defendant-applicant, though not bailee was not committing a trespass in using the pony he would not be liable for its illness and death unless he was guilty of negligence that is, of omitting to do something that a reasonable man would do, or of doing something that a reasonable man would not do in either case unintentionally causing mischief to another.

As to contributory negligence the rule is that if the plaintiff could by the exercise of such care and skill as he is bound to exercise have avoided the consequence of the defendants' negligence, he cannot recover.

Held that the plaintiff's failure to treat the pony in a proper manner and his taking it a long distance as he did would have been undoubtedly amounting to contributory negligence if the defendant had been guilty of negligence and would in that case have debarred plaintiff from recovering any damages. Trespass is the infringement of a right and gives a cause of action even when no damage results. *Shaw J. C.*

Nga Tun Nyo v. Nga Tha Hmat, 14 Bur. L. R. 218.

Partnership—*Partner—power of single, to mortgage partnership property—Contract Act, S. 251—A single partner by objecting cannot vary articles of partnership—Transfer of Property Act, s. 53—Transfer cannot be impeached by any but the creditors—Where one of several*

partners has, under arrangement with the other partners, the sole management of the business, he has the power of borrowing: *Obiter*.—The English doctrine that a single partner cannot mortgage the immoveable property of the firm does not apply in India. It is not competent to a single partner to take objection to the exercise of any power conferred by the articles of partnership. Where a partner has power to borrow or mortgage for the purpose of trade, he has power to give a mortgage for an antecedent debt. An objection that a transfer of property was made with intent to defeat or delay creditors must be taken by the creditors and it is not open to others to object to the transfer on that ground.

Wallis & Savkara Nair J. J.

Asam Kani Ravuttar v. Somasundaram Chettiar, 31 Mad. 206=4
M. L. S.

Practice—Evidence—Documents—Privilege attaching to documents. Such documents to be properly described for identification—Documents passing between a company and its officials after threatened suit not per se privileged.—The defendants are bound to describe the documents, for which they claim privilege, sufficiently for the purpose of identification to enable the court to order their production should the Court think right to do so.

In a suit against a Railway Company the papers which passed between the company and its officials relating to the subject matter in dispute since the plaintiff threatened a suit are not by nature privileged. If privilege is claimed for any of them, the grounds thereof should be clearly set forth in the affidavit.

Macleod J.

Nemchand Manaji v. R. D. Sethna 10 Bom. L. R. 796.

—————**Allegations—Deceit on these allegations—new case in appeal not allowed.**—A litigating party can only succeed *secundum allegatam probatam*, and the courts should check the tendency of defeated litigants to evade their defeat by devising a new case which was never set up. It is therefore, not open to a court of appeal, to expose a party after he has obtained his decree to the brunt of a new attack of which he had never had any notice during the hearing of the suit.

Batchelor & Chaulbal J. J.

Nathu Piraji v. Umedmal 10 Bom. L. R. 768.

—————**Second appeal—new point of Registration.**—It is open to the High Court on second appeal to deal with the case on the ground of non-registration which was not taken in either of the lower courts.

White C. J. & Miller J.

Srinivasa Aiyangar v. Parthasartly Aiyangar 4 M. L. T. 79.

Preemption—Burma—right of co-heirs.—A co-heir of ancestral undivided estate, should he wish to sell his share is bound to offer it first to his co-heirs, and a sale to strangers effected without such offer is invalid, if the co-heirs promptly assert their right.

After division of ancestral estate, the holder thereof, being a member of the family wishing to sell the land falling to his share must first offer it to his co-heirs and a sale to a stranger without such offer being made is invalid. If after the land is offered to co-heirs they will not purchase it at the price offered, the co-heir so offering the land can sell the land to another at that price without hindrance.

Hartnoll J.

Maung Mo Thi v. Maung Tha kwe 14 Burma L. R. 205.

——— **Wajib-ul-arz—construction of custom or contract—Partition-Co-sharer.**—Where a wajib-ul-arz opened with a declaration that the zamindars and khewatdars agreed that up to the term of settlement and in future to the termination of the next settlement they should abide by the following conditions and act upon them and one of the conditions related to pre-emption, held, that the record was one of the contract and not custom.

Where a wajib-ul-arz recognised a right of pre-emption in favour of co-sharers descended from a common ancestor, and by reason of a subsequent partition the pre-emptor though descended from the same stock as the vendor, had ceased to hold any share in the mahal portion of which was the subject of sale; semble, if the right recorded was one existing by custom, the plaintiff would be entitled to pre-empt.

Stanley C. J. & Karmat Husain J.

Budh Singh v. Gopal Rai 5 A. L. J. 539.

——— **Re-sale to vendor.**—Where before the institution of a suit for pre-emption of land the vendee had resold the land to the vendor and it was contended that the resale was a bar to the suit.

Held that the contention was not valid. 22 All. p. 125 dissented from.

Ohevis, J.

Sukha v. Aruramal, & Lal Khan 9 P. L. R. 536.

Presidency Small Cause Courts Act, (XV of 1882), sec. 69—Negotiable Instruments Act, 1881 s. 84(2)—Presentment of cheque within reasonable time, one of fact. The question whether a cheque has been presented within a reasonable time is one of fact and is not a question which the Small Cause Court can refer for the opinion of the High Court.

Benson & Munro J. J.

The East Indian & Anglo Indian Deposit and Loan Society Limited v. Dr. T. M. Nair, 4 M. L. T. 89.

Promissory Note.—Alteration—Onus. If a bill of exchange or promissory note exhibit the appearance of alteration the onus lies on the person suing to account for it but in other documents (except wills) the alteration is presumed to have been made before execution.

Held therefore, that in this case, the onus was rightly placed upon the plaintiff by the Divisional Judge, whose decision that there was a subsequent material alteration made in the promissory note, which has rendered it null and void is also right. *Ormod J.*

Raja Shewbuc Bogla v. Ma Ma Gyi, 14 Bur. L. R. 213.

Punjab Land Alianation Act (Act XIII of 1900), sec. 3 (3) and 19—Sale of land by members of an agricultural tribe to non-members—Deputy Commissioner's orders granting or refusing sanction not final Punjab Land Revenue Act (XVII of 1887, section 16 (11)—No right of appeal or revision to a person not party to the transaction—Financial Commissioner's circular No. 3441 dated 5th June 1901 paragraph II (vii). *Held.* That an order by a Deputy Commissioner under section 3 (3) of the Alienation of Land Act XII of 1900 granting or refusing sanction to a permanent alienation of land required by section 312, is not final, and under section 19 of the Act is subject to appeal and revision like other order of Revenue officers as is provided in Chapter II of the Punjab Land Revenue Act XVII of 1887.

Held also that the remedy by way of appeal or revision would only be open to one of the parties to the transaction and not to a possible reversioner or pre-emptor and under paragraph II (viii) of Financial Commissioner Letter No. 3441 dated 5th June 1901, a Deputy Commissioner is bound to submit the case for sanction although he does not consider that vendee is a money lender.

Ram Saran Dass v. Sardara, 3 Pun., W. R. 9.

Punjab Tenancy Act, (XVI of 1887), S. 77 (3) (e), S. 34 of Act XVII of 1887—Jurisdiction of Civil or Revenue Court—Mortgages and mortgagor—When no relation of landlord and tenant created—Promise to pay rent or interest in default. *Held*, that where a mortgage deed of land provides that the mortgagor is to retain possession under the mortgagee paying rent at the rate fixed therein and in default he is liable to pay interest but these conditions have neither been acted upon for years nor even brought to the notice of the Revenue authorities, the mere execution of such a document does not create the relation of landlord and tenant between the mortgagor and mortgagee whatever be the rights of the parties under the deed or their relation to each other.

Nizam v. Budhan, 3 Pun. W. R. 8.

—**Sec. 5 (1) (b), 10 and 70—Occupancy rights—Shamlat Deh.** Proprietary body occupying Muafi holding—Effect making settlement with heir of Muafidar after resumption of Muafi on cultivator's position—Heir of Muafidar entitled to landlords' profits. Held, that when land the revenue of which has been assigned is no resumption settled with Muafidar's heir, he is ordinarily entitled to receive the landlord's profits in the land and to eject the tenants unless they can prove that they have acquired a right of occupancy and that the mere facts that the land is land owned in common by the whole village and that some members of the proprietary body are the cultivators of the land do not give those cultivators a right of occupancy.

Kartar Singh v. Puran, 3 Pun. W. R. 6.

Receiver—Leases—Application to set aside—Summary jurisdiction Pro interesse suo—Receiver's account—Action—Practice. No summary order can be passed to set aside a lease already executed and granted by a Receiver. The proper remedy of the aggrieved parties is to institute a regular suit to set aside the lease against the Receiver and also the lease, if it is alleged that the lease was obtained by collusion. *Surenkra Keshab v. Durga Sundari*, 15 Cal. 253, distinguished.

No order can be made against a lessee from a Receiver for arrears of rent or interest in an application in a suit. A regular suit ought to be instituted to recover them.

The claim against a Receiver for giving up arrears of rent or interest due under a lease granted by him are matters which cannot be dealt with in an intercututory application in the suit.

Quere, whether the Court can go into such matters on the passing of the Receiver's accounts or the parties must file a suit in respect of them against the receiver. *Woodroffe J.*

Krista Chandra v. Krista Sakha, 12 C. W. N. 1028.

Registration Act S. 17 (d) and 49.—Lease in perpetuity—Mortgage with power to assign the lands.—A mortgagee who was empowered to assign the lands, gave to the defendant a lease in perpetuity at a rent of 8 annas per acre.

Held that the document was a lease within the meaning of 17 (d) of the Registration act to which the exception referred to in the proviso to the section does not apply the lease not having been registered could not under sec. 49 be received in evidence.

White C. J. & Miller J.

Srinivasa Aiyangar v. Parthasarthy Aiyangar 4 M. L. T. 79.

—————**S. 48—Equitable mortgage.**—A mortgage by deposit of title deed is something more than a mere oral agreement or declaration and therefore section 48 of the Registration Act does not apply.

Irwin, & Ormond J. J.

Paw Wa vs. O. A. R. Vallioppa Chetty 14 Burma L. R. 211.

—————**Sec. 50—Mortgage—Sale of property comprised in an unregistered mortgage—Liability of purchaser—Notice.** Property was purchased which was the subject of an unregistered mortgage, the registration of which was not compulsory. The purchaser had no notice of the mortgage at the time of execution of sale deed in his favour, but received notice before the sale deed was registered. *Held* that the mortgage was binding on the purchaser. The principle of *Dican Singh v. Jarloo Singh*, 19 All. 145 and *Bhikhi Rai v. Udit Narain Singh*, 25 All. 366 applied.

Knox J.

Khiali Ram v. Himmata 30 All. 238.

Religious Endowment—Kaltai—Purchase of land in the name of Idol—Deed in the custody of donor—No reservation of Power to appoint manager of the Kaltai.—A person who absolutely makes a gift of land for the purpose of kaltai in favour of an idol without reserving any rights whatever cannot subsequently appoint a manager for the Kaltai.

Held also that the fact that the donor retained the deed of gift with herself was not sufficient evidence of any reservation of the power, to appoint a manager in the donor.

The conduct of the parties years after the execution of a deed is of no avail in construing the deed.

Miller & Munro J. J.

Krishna Pillai v. Erunachda Chettiar 18 Mad. L. J. 304.

—————**Act (XX of 1868) s. 14—Court may, by decree, direct appointment by competent person of new trustee in lieu of the one removed and order the trustee removed to surrender possession to the trustee so appointed—Trustee to be removed when he keeps no proper accounts and makes false claims.**—It is competent to the Court when, in a suit brought under section 14 of the Religious Endowments Act, it directs the removal of a trustee, to order a person competent to appoint a new trustee to make such appointment and to direct the trustee removed to surrender possession of property and pay any damages decreed to the new trustee to be appointed. A trustee ought not to be detained in the trusteeship when he does not keep proper accounts and misappropriates monies, and further makes false claims against the trust property.

Wallis & Sankaran Nair J. J.

Maiyaji v. Sheik Ahmed Sahib 31 Mad., 212.

Revenue sale Law (Act XI of 1859), sec. 37, Exo. 4—Houses and tank built by incumbrancer—suit to avoid incumbrance—Assignee from purchaser—Right of suit—Limitation Act. Art 121.—Where a person claims exemption from the provisions of the Revenue sale Law which entitle a purchaser to annual incumbrances in respect of land in his possession the benefit of the 4th exception to sec. 37 of the Act must be limited only to such portions of land as are covered by buildings tanks &c. and can not be extended to cover those lands included in the lease on which—buildings and tanks etc. have not been constructed. An assignee of a purchaser of an estate sold under the Revenue Sale Law is entitled to bring a suit to avoid incumbrances,—Art 121 of Sch. II of the Limitation Act applying to such a suit.

Brett & Coxe J. J.

Wahid Ali v. Rahat Ali 12 C. W. N. 1029.

Shebait—Decree—Interpretation of decree—Shebait's position. Where a suit for the recovery of possession of immoveable property was instituted against P. who defended the suit as a *shebait* and signed and verified his written statement as such, alleging that the lands were *debutter*, and where the decree was passed against him as such, with a direction that the mesne profits should be realized from the defendant. *Held*, that the decree must be taken to have been passed against the defendant as *shebait* and not in his personal capacity and that the *debutter* property was liable to make good the claim for mesne profits and consequently to be attached and sold in execution of the decree. Powers and duties of *shebait* explained.

Maclean C. J. & Dass J.

Pramada Nath Ray v. Poorna Chandra Ray, 35 Cal. 691.

Small Cause Courts (Presidency Act XV of 1882) sec. 19 (k)—*Suit to enforce arrears of annuity—Suit to enforce a trust.* A suit to enforce the arrears of an annuity payable under a will and to which the executors have assented is cognizable by the Presidency Small Cause Court. It does not fall under sec. 19 (k) of the Presidency Small Cause Courts Act.

Scott C. J. & Heaton J.

Dossabai v. Cooverbai, 10 Bom. L. R. 758

———**Provincial (IX of 1887),—Sch. 11, Cl. 8 and ss 15 (1), 32—Suit for recovery of rent of homestead land—Jurisdiction of Courts invested with Small Cause Court Powers.** Clause (1) of section 15 of the Provincial Small Cause Courts Act should be read with clause 8 of the second Schedule of the Act. So read, the expression "the Judge of the Court of Small Causes" in clause 8 of the Second schedule must be taken to apply either to a Court of Small Causes constituted under the Act or to

a Court invested with the jurisdiction of Small Causes.

Brett & Doss J. J.

Akshay Kumar Soba v. Hira Ram Dosad, 35 Calc. 677.

Stamp Act (II of 1899) sch. 1, arts 55 and 23—Conveyance—Release. A document which is styled as a release, under article 55 schedule I of the Stamp Act under which the executant not only relinquishes his rights over a certain portion of his property but receives a specific sum of money for the bargain, is a conveyance and is chargeable as such under Art 23 of the Act.

Scott C. J. & Batchelor & Chaubal J. J.

In re Hiralal Navalram, 10 Bom. L. R. 733.

Suit—Right to sue—Incumbrances suit to avoid—Purchaser from a purchaser at a revenue sale—Putnidar—Permanent settlement—tenure from before long possession—Presumption—Direct evidence. A purchaser from a purchaser at a sale for arrears of Government revenue as well as a putnidar are persons who can sue to avoid incumbrances or under tenures created since the permanent settlement.

It is not necessary that direct evidence should be given to prove the existence of a tenure from before the permanent settlement in order that it might be protected from evidence on account of sale for arrears of Government revenue. A presumption in favour of its existence arises from the proof of the existence of a tenure for a very long time say from 1824.

Mitra & Bell J. J.

Ananda Chandra Poddar v. Kunj Beharilal 8 C. L. J. 177.

Talukdar—Non-talukdari Property, Rules of succession—Applicable to Talukdar, acquisitions by—Succession. Certain properties were granted to G by a *sanad* which provided that it should descend to male heirs only under the rule of primogeniture. G and his successors acquired other property.

Held that, the devolution of the acquired property was not governed by the *sanad*.

Held further, that a Zemindar cannot make his property descendible in a manner not recognised by the ordinary law to which he is subject.

Chamier J. C.

Rajendra Bahadur Sing v. Rani Raghubans Kunwer (11 O. C. 256)

Transfer of Property Act, S. 52—*Lis pendens*—Per-emption—Resale to a co-sharer after institution of a suit for pre-emption. After the filing of a suit for pre-emption but before service of summons on the defendants, the defendant vendee re-sold the property claimed to a second vendee

who had equal rights as a co-sharer with plaintiff. This second vendee was added by the Court as a party defendant, but the plaint was not amended and the plaintiff did not seek to preempt the sale made in his favour. *Held* that the doctrine of *lis pendens* applied, and the plaintiff was entitled to a decree. *Faiyaz Husain Khan v. Prag Narain* (29 All., 339) referred to. *Mangal v. Sahib Ram* (27 All., 544) distinguished.

Stanley C. J. & Banerji. J.

Chasitey v. Gobind Das, A. W. N., 1908, 221.

———**S. 52**—*Lis pendens exists until the final decree in appeal is passed.* The functions of an Appellate Court are not the same in India as in England and America. In India, the decree of the appellate Court is, under the Code of Civil Procedure, the final decree in the case, and the proceedings in appeal must, for the purposes of section 52 of the Transfer of Property Act, be treated as a continuation of the proceedings in the lower Court. A transfer of property, which is the subject-matter of contentious litigation, by a party thereto *after* the date of the decree of the lower Court and *before* an appeal is preferred against such decree, will be affected by the principle of *lis pendens* under section 52 of the Transfer of Property Act.

Munro & Sankran Nair J. J.

Settappa Giundan v. Muthia Goundam, 31 Mad., 268—4 M. L. T. 77

———**S. 59**.—*Provisions of section not sufficiently complied with when witnesses not present at execution, but attest son executant's acknowledgment of signature.* A mortgage deed is "attested" by witnesses within the meaning of section 59 of the Transfer of Property Act only when such attesting witnesses are actually present at the time of execution. The provisions of the section are not complied with when the witnesses are not present at the execution of the document but attest it subsequently, on the acknowledgment by the mortgagor of his signature. *Abdul Karim v. Saliman*, (27 Calc. 193), followed. *Ramji v. Bai Parvati*, (27 Bom., 91), dissented from. *Ganga Dei v. Shiam Sundar*, 26 All., 69, dissented from. *Per Wallis, J.*—The provisions of section 50 (clause 3) of the Indian Succession Act prescribing the manner in which a will must be attested and allowing attestation by witnesses on the testator's acknowledgment of his signature, cannot be regarded as a statutory definition of an attestation applicable to other Indian Acts. *Per Sankaran-Nair. J.*—The absence in section 59 of the Transfer of Property Act of the provision as to attestation on acknowledgment of signature contained in section 50 (3) of the Succession Act, shows that, under section 59 of the Transfer of Property Act, attestation of the actual signature is necessary.

Wallis & Sankara Nair. J. J.

Shamu Patter v. Abdul Kadir Ravuthan. 31 Mad., 215.

———**Sec. 59, cl. 2—Mortgage with possession—Second mortgage under an unregistered deed—Delivery of property—Stipulation postponing redemption till payment of the additional advance, not binding on purchaser—Registration Act, s. 49—**Property subject to a possessory mortgage was again mortgaged by an unregistered deed to secure a fresh advance. The second mortgage provided that the property should not be redeemed except upon payment of the additional advance.

Held that, there being nothing in the transaction which could be regarded as delivery of the property, the deed should have been registered.

Held further, that a purchaser of the property subject to the mortgage was not bound by the stipulation postponing redemption till payment of the additional advance.

Held also, that the stipulation could not be enforced because the subsequent deed being inadmissible in evidence under section 48 of the Registration Act could not be used to fetter the equity of redemption.

Chamier J.

Sada Sheo v. Manabir Prasad, 11 O. C. 248.

———**Sec. 85—Mortgage—Suit for sale on mortgages—Parties.** Whether or not section 85 of the Transfer of Property Act, refers solely to persons interested in the equity of redemption, it is not essential to join as a party defendant in a suit for sale on a mortgage a person whose interest in the mortgaged property, if it exists, would be antagonistic to the claims of both mortgagor and mortgagee.

Richards J.

Khairati v. Banni Begam, 30 All. 240.

———**Sec. 88 and 90—Civil Procedure Code, section 258—Execution of decree—Alleged payment out of Court not certified.** Applications for an order absolute for sale under section 89 of the Transfer of Property Act; are applications for the execution of the decree under section 88 of the Act. To such applications section 258 of the Code of Civil Procedure is applicable and bars the recognition of payments made out of court in pursuance of the decree unless such payments are certified to the Court in the manner prescribed by the section. *Vaidhinadasamy Ayyay v. Samasundram*, 28 Mad. 473 followed. *Mullikarjuna Susri v. Narasinha Rao*, 24 Mad. 412 and *Hatem Ali Khundkar v. Abdul Ghaffur Khan*, 8 C. W. N., 102 dissented from.

Aikman & K Husein J.

Hakim Singh v. Ram Singh, 30 All. 248.

———**Sec. 91—Redemption of mortgage—Reversionary heirs of deceased husband of Hindu widow not entitled to redeem mortgage made by husband.** The reversionary heirs of the deceased husband of a Hindu

widow in possession as such of her husband's property are not persons who, within the meaning of section 91 of the Transfer of Property Act, have such an interest in the mortgaged property, as would entitle them during life-time of the widow to redeem a mortgage made by the husband.

Stanley C. J. & Rampini J.

Ram Chandar v Kallu, A. W. N., 1908, 25.

Trespass.—*Acts done under orders of lawful superior, responsibility for House-search—Trespass abinitio—Trespass on person—Master and servant—Loss of service.*—A person cannot be held responsible for acts done by him under the orders and directions of his lawful superior.

If a police-officer, whilst lawfully conducting a search, assaults some person on the premises, his entry on the premises does not necessarily become unlawful from the outset.

In all cases of action for trespass to the person of the servant it is necessary for the master to prove that he has, to some extent at least, been deprived of the services of his servant owing to the wrongful act of the alleged trespasser.

Fletcher J.

Brojendra Kishore Ray Chaudhuri v. M. A. Lufseman 12

C. W. N. 982.

—*House-search by Magistrate—statutory justification—Indian Arms Act (XI of 1878) sec. 25—arms—search for—Grounds of belief.*—Unless a Magistrate can justify his act as having been done under the authority of law, he is liable in an action of trespass for acts done by him to the persons or property of others.

If a Magistrate seeks to justify his acts under the provisions of a statute he must bring himself strictly within the words thereof.

When a Magistrate hold a search of a house without first recording the ground of his belief that the owner thereof has in his possession any arms etc. for an unlawful purpose and that such owner cannot be left in possession of such arms etc. without danger to public peace in the way provided for in sec. 25 of the Indian Arms Act (XI of 1878), he cannot justify the search under that Act.

Fletcher J.

Brajendra Kishore Roy Chaudhuri v. L. O. Clarke 12 C. W. N. 978.

Trustees.—*Suit by Decree in plaintiffs favour—appeal by defendants Plaintiff's application to alter the judgment so as to defeat his own action—new plaintiffs' joining of—surrender of a decree in his favour by a trustee—Betrayal of trust—Refusal of the court alter the decree.*—The plaintiff the hereditary trustee of a temple dedicated to the worship of Shiva and where the customary ceremonies of Hindu worship were carried on, sued

the defendant who represented a caste called the Nadar or shanar caste. The question between the parties was whether the defendants and the caste to which they belonged had legal right to enter and worship in the temple. The first court decided against the defendants, who thereupon appealed to the High Court. The plaintiff thought fit to profess that he then saw that he and the Judge of the Lower Court were wrong and asked the High Court that the judgment of the lower court should be altered so as to defeat his own action. The High Court on being applied to, as their Lordship held very properly, reinforced the cause of the worshipers of the temple by joining certain new plaintiffs to the original plaintiff (whose confidence in the justice of his suit had by that time convalesced) The High Court refused to alter the decree and their Lordships were of opinion that the principles applicable to the case of the trustee who thus betrayed his trust by surrendering a decree had been well stated and applied by the High Court.

(P. C.)

Sankaralinga Nadan v. Raja Rajeswara Dorai 10 Bom. L. R. 781.

= 12 C. W. N. = 31 Mad.

Trusts Act, Ss. 5, 81—*Bequest to legatee with oral directions in testator's lifetime for the disposal of the property—Rule of English Law that such legatee is bound by the trusts so declared by testator applies in India under s. 5 of the Trusts Act—Section 81 of the Trusts Act does not apply to such cases—Maintainability under s. 187 of Succession Act of a suit by the beneficiary for the benefit conferred in the absence of Probate or Letters of Administration.* Under English Law, where a testator disposes of property in favour of a legatee, and, at the time of such disposition or at any subsequent period during his lifetime, the testator informs the legatee that the disposition in his favour, although apparently for his benefit, was so made in order that he may carry into effect certain wishes of the testator which are communicated to him, and the legatee expressly, or impliedly, undertakes to carry out the wishes so expressed to him by the testator, the legatee will be treated as a trustee, and will be compelled to carry out the instructions so confided to him. The reason for this rule is that it would be a fraud on the part of the legatee not to give effect to the testator's intentions, and the law will not permit him to benefit by his own fraud. The Legislature in enacting section 5 of the Indian Trusts Act and the proviso thereto intended to make this rule of Equity applicable in India. Section 50 of the Indian Succession Act does not apply to such cases. The instructions of the testator are given effect to under the English Law, and under section 5 of the Trusts Act, not, as a part of the will, but by fastening on the conscience of the legatee a personal obligation to carry into effect the wishes of the testator, in order to prevent

the perpetration of fraud. The title of the beneficiaries is one *dehors* the will and not under the will. The provisions of section 81 of the Indian Trust Act do not apply to such cases. That section has reference to the disposal of the beneficial interest by transfer or will. Where such a legatee, to whom the testator has confided his intention suppresses such secret instructions with the intention of retaining the estate himself and applies for Letters of administration as universal legatee, the Court will refuse the grant.

Wallis & Sankaran Nair J. J.

Manuel Louis Kunha v. Jnana Coetho, 31 Mad., 187.

Wajib-ul-arz—Construction of Document—House tax—Cess—Rent. Under the *wajib-ul-arz* of a village called Radhakund the zamindar was declared to be entitled to one *taka* (six pies) per month for every house from the owners of shops and temples. *Held* that this payment (which was called “gharghanna”) was not a house tax, or cess, but merely ground-rent and did not require special sanction.

Stanley C. J. & Burkitt J.

Balwant Singh v. Shankar, 30 All. 235.

Will—Construction of *Rupia* “money”—Presumption against partial intestacy. In the absence of explanatory context, a word such as “money” should be construed in its strict sense, but terms which in their strict and proper signification apply to a particular species of property may be held to embrace the general personal estate of a testator where the latter has shown a clear intention to make a complete disposition of his property.

The Court always leans against to make a testator die partially intestate, where therefore it appeared that a testator did not intend to die intestate as to any portion of his property made certain dispositions with regard to “my money (*Rupia*) and the money due to me under bonds which may be realised”; *held* that the intended the word “money” (*rupia*) should be synonymous with the words *turka* (heritage) and *jaided* (estate) which he had used in the earlier part of the Will.

Stanley C. J. & Burkitt J.

Cheda Lal v. Gobiud Ram, 5 A. L. J. 519.

———**Construction—Principles—Life estate—“In trust”—As may require**—“For her maintenance and support” In construing a Will, technical words of known legal import must be given their legal effect even though the testator uses in consistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. *Lalit Mohan Rai v. Chukkun*, 1897 24 C. 834 (P. C).

Where there has been a devise or bequest of all a man's property, the generality of the disposition should not be cut down unless the intention that it should be so cut down is clear. An obligious words in a will should generally be construed against the tenant for life.

White C. J. & Miller J.

Mary Haeriett v. George Oakes, 18 M. L. J. 331=31 Mad. 263.

—document whether—construction—operation after death—Revocability—A document which contains—directions regarding the executant's property after his death, which in certain circumstances may be revoked is a Will.

Instruments not drawn by professional men should be liberally construed.

The documentation question in this case would be ineffective as an instrument of transfer of immoveable properties owing to the properties not being specified in it, but could be given effect to if it were a Will. Held. That the document was a Will.

Mitra & Caspersz J. J.

Ram Meni Dasi v. Ram Gopal Sheher. 12 C. W. N. 942.

Witness—Right of as to payment of expenses. A witness in a civil case is entitled to payment of his expenses according to section 160 of the Civil Procedure Code before he gives evidence.

If he is not paid he is not bound to appear at all in answer to the summons (see the explanation to section 174) If he does appear, the court may discharge him without requiring him to give evidence (see section 162).

A witness is free represent to the Judge that he has not been properly paid, and on that ground to refuse to give evidence.

It is then the business of the Court to decide whether he had been duly paid. If the Court does this, the witness is bound by the Court's decision.

It is no offence to refuse to give evidence in the first instance, on the ground of insufficient payment of expenses before the Judge has decided that the payment is insufficient.

The applicant was convicted under section 178 of the Penal Code and sentenced to pay a fine of Rs 10, or in default to undergo seven day's rigorous imprisonment.

The proceedings were defective in failing to show whether the applicant still refused to give evidence after the decision of the Court that the applicant had been duly paid.

Shaw J. C.

Nga Pyo v. King Emperor 14 Burma L. R. 216.

THE LAWYER.

1st NOVEMBER 1908.

Part I.

Account—Will—Executor—Intermeddling with estate—Degree of interference necessary to charge executor—Account on footing of wilful default—Practice—Limitation.—The Plaintiff brought a suit against the executors of the will of her grandfather, praying for a declaration that she was absolutely entitled to the property of her grandfather and for on account of the property in the hands of the executors. The plaintiff claimed as heir and not under the will.

Held, she was only entitled to accounts for six years preceding the suit as she took no interest in the property under the will, and the executors were not trustees for her and the property did not vest in them for any specific purpose in her favour. Such a suit is not a suit for the purpose of following such property in the hands of the executors and trustees.

Davar J.

Ayeshabai v. Ebrahim 32 Bom. 364.

Administration Suit—Estate belonging to a living Hindu debtor—Competency to entertain the suit—Civil Procedure Code sec. 11.—A Civil Court cannot entertain a suit brought to administer the estate belonging to a living Hindu debtor. *Bai Meherbai v Maganchand* 29 Bom. 96, explained.

Chandavarkar & Heaton J. J.

Gangaram v. Nagindas 32 Bom. 381.

Appeal—Rent Act (X of 1859), ss. 160, 161—Order refusing to rehear an appeal decided ex parte—Appeal against such order—Civil Procedure Code ss. 560 and 588.—An appeal, which was preferred under section 160 of Act X of 1859, was heard *ex parte*; an application to set aside the *ex-parte* judgment was dismissed by the appellate Court. Against the order of dismissal, on an appeal to the High Court, a preliminary objection being taken that no appeal lay:—*Held*, that by virtue of sections 560 and 588 of the Code of Civil Procedure, which were applicable to appeals under Act X of 1859, the appeal lay to the High Court.

Stephen & Mukerji J. J.

Hare Krishna Mahanti v. Bishnu Chandra Mahanti 35 Cal. 799.

Attorney Client—Bill of costs—As between attorney and client, the existence of fiduciary relationship alone, or the fact that certain bills of costs were not taxed but were settled out of Court by execution of a deed, will not justify a Court in re-opening accounts settled on which the bond is based, unless sufficient grounds of suspicion exists or the bills are *prima facie* shown to be extortionate.

Coxe & Doss J. J.

Shamuldhone v. Srimutty 12 C. W. N. 1102.

—————**Independent advice, opportunity to obtain—Promissory note-assignment of.**—An attorney may be bound under certain circumstances to advise his client to take independent advice. It is not his business to see that the attorney selected by his client fulfils his duties to his client and is not guilty of any remissness or negligence. If he sends his client to another attorney and is ready to comply with all reasonable demand for information, he cannot be expected to do more, or to be responsible for another's emissions.

Coxe & Doss J. J.

Shamuldhone v. Srimutty 12 C. W. N. 1102.

Babuana Grant.—Partition—Ancestral property—Babuana grant—Original grantee's power to dispose of by will—Rights of junior members. Babuana grant of ancestral property does not change the ancestral character of the property and turn it into self-acquired property in the hands of the grantee or his direct male descendants. The original grantee has no power to dispose of the property by will, and the other members of the family have those rights in it, which they can claim under the Mitakshara law, viz., the right to restrain alienation, except in cases of legal necessity, and the right to claim partition. *Ramchandra Marwari v. Mupheswar Singh*, 33 Cal., 1158, and *Rameswar Singh v. Jibender Singh*, 32 Cal., 683, followed.

Brett & Chitty J. J.

Laliteswar Singh v. Bhabeswar Singh, 35 Cal. 823.

Bengal Land Registration Act, (VII of 1876), secs. 78.—*Registration during pendency of suit.* If the name of a proprietor is registered under the Land Registration Act during the pendency of a suit for rent by him, and the Registration decree is produced in the course of the trial, it must be held that there is sufficient compliance with the requirements of the Act.

Rampini & Mookerjee J. J.

Rabia Knatuu v. Rani Bilashmani, 8 Cal. L. J. 299.

Bengal Municipal Act. (Bengal Act III of 1884) ss 85, cl. (a), 87 cl. (d), 113, 114 and 116—*Jurisdiction of the Civil Court to question assessment*—"Circumstances and property within the Municipality,"

meaning of. Sec. 116 of the Bengal Municipal Act (III of 1884) does not take away the jurisdiction of Civil Courts in a case in which it is alleged and established that the assesment, the propriety of which is in controversy, is open to objection on the ground that it is *ultra vires*. *Navodip Chandra Pal v. Purnananda Saha*, 3 C. W. N. 73 and *Kameshwar Pershad v. The Chairman of the Bhabua Municipality*, 27 Calc. 842, referred to. A rate-payer, who occupied a holding within the Municipal limits, was assessed with an annual tax with reference to the salary earned by him within the Municipality. He took exception to the assessment under s. 113 of the Bengal Municipal Act (III of 1884), but this application was rejected by the Municipal authorities without recourse to the procedure laid down in sec. 114 of the Act and he declined to pay the sum assessed. The Municipality brought a suit against him for recovery of arrears of tax. Upon an objection taken by the defendant that the assessment was *ultra vires*, and that it was not made according to his "circumstances and property within the Municipality":—*Held*, that the assessment was rightly made, and that "the circumstances and property" meant the whole amount he earned, and not what he spent, within the Municipality. *Stephen & Mookerjee J. J.*

Chairman of Girdih Municipality v. Sriek Chandra Mezumdar, 35 Cal. 859

Bengal Reg. III of 1891.—*Jham cultivation*—*Legislation to extinguish right to carry on such cultivation outside settled estate*—*Compensation*—*Onus to prove that statute applies statement of facts in preamble of statute*—*Value*—*Question of fact or law*—*Concurrent findings*—*Evidence*, sec. 13—*Transactions inter alios*. Reg. III of 1891, when applied to any lands would have the effect of confiscating proprietary rights and giving compensation in exchange. The onus therefore lies on Government to show that the facts of any case are such as to bring it within its operation. The Government must prove that at the permanent settlement the affairs of the Government included amongst the assets of the estate income derived by its owners from *jham* cultivation carried on beyond the limits of the estate.

The argument that under the Regulations then in force no assets not arising out of the estate could be lawfully taken into account, and that a strong presumption was thus raised that the course which was in accordance with law was followed in a particular case, was not mentioned in the face of the preamble to the Regulation which shows that in a number of cases the income of *jham* cultivation carried on beyond the estate was rightly or wrongly taken into account.

It was proved that as early as 1837, the owners of the estate received *kabuliyats* from tenants carrying on *jham* cultivation on the disputed land,

that in 1892 and 1893 they succeeded in defeating an attempt on the part of persons interested in the adjoining mongat to exercise rights over the land, and that on several occasions they successfully resisted proposals on the part of the Revenue authorities to settle portions of the land as inam land, open for settlement. *Held*—That from this and other evidence of continuous possession and enjoyment, it should be inferred that the land was included within the permanently settled estate of the owners, and the Regulation had no application to it.

The question here was in one sense a question of fact, but every point in the process of the reasoning involved consideration of law, and thus although the findings of the Courts in India were concurrent the Judicial Committee could review such findings in appeal. P. C.

Mahomed Ali v. Secretary of State for India in Council, 12 C. W. N. 1095.

Bengal Tenancy Act (VIII of 1885) S. 22—‘Or otherwise’—Ejusdem generis—*Mortgage lien if subsists*. The words ‘or otherwise’ in S. 22 of the Bengal Tenancy Act, must be construed. ‘Ejusdem generis’ and do not include the case of a holding reverting to the landlord on the failure of the tenants’ heirs.

Holmwood & Sharfuddin, J. J.

M9ktakeshi Dasi v. Pulin Behary Singh, 8 Cal. L. J. 324.

—————**Chap. X—Record of rights—Alteration of entries—Regular suit—Maintainability of—Special procedure—Ss. 106, 108.** No regular suit can be maintained for the alteration and correction of entries in a record of rights. The special procedure in Sections 106, 108 of the Bengal Tenancy Act must be followed.

Maclean & Doss, J. J.

Jogendra Nath Roy v. Krishna Pramada Dasi, 8 Cal. L. J. 322.

Bombay City Municipal Act (Bom. Act III of 1888) S. 354—Municipal Commissioner—Power to remove objectionable structures—Exercise of the power—“Appear,” interpretation of—Danger, kind of, contemplated by the section—Discretion vested in the Commissioner—Courts interference with the discretion—Commissioner can act through agent—Right of the party to be heard in answer to his notice—Injunction to restrain Commissioner from putting down a building. The primary object of S. 354 of the City of Bombay Municipal Act, is the safety of the public, to secure which the commissioner must of necessity be given very wide powers. But it does not follow that those powers must be exercised arbitrarily and without due consideration to the provisions of the section and the right of individuals. In the first place, it must appear to the Commissioner that a structure is in a ruinous condition or likely to fall or in

any way dangerous to any person occupying, resorting to or passing by such structure. He may next by written notice require the owner or occupier to pull down, secure or repair.

The word "appear" in the section does not involve "appears to the eye." It is sufficient if it appears to the commissioner on the representations of a competent officer whose duty it is to make such representations. But the Commissioner's action when "it appears" is judicial, so that he must exercise his discretion in determining what action should be taken. He does not satisfy this test, where he merely signs the notice which is sent to him by the Executive Engineer because it has previously been signed by that officer.

It is only by aid of a fiction that it can be said that a notice signed in this way by the Commissioner complies with the section, which should be considered as a notice to show cause. It is not invalid; at the same time it cannot deprive the person served with it of his right to object unless the legislature has clearly deprived him of such a right. *Macleod, J.*

Lalbhai v. The Mun. Com. for the City of Bom., 10 Bom. L. R. 821.

Budhists—Succession—Child of divorced couple. There seems to be a great weight of authority in favour of the proposition that a child of a divorced couple is entitled to inherit from the parent with which he or she lives and is generally not entitled to inherit from the other parent (when that other parent has married again and has children by the second spouse) property acquired during the second marriage, and that visiting the other parent and receiving presents or even maintenance from him does not constitute a continuance or resumption of filial relations, such as would entitle the child to inherit such property. *Irwen C. J. & Ormond J.*

Mapau v. Mamon, 14 Bur. L. R. 236.

Calcutta Municipal Act (3 B. C. of 1898), Ss. 406, 408, 409, 574.—*The power of the General Committee to proceed either under Sec. 406 or Sec. 408—Sub Committee's power to sanction amendment of the original plan—The officer who should inspect a bustee and submit report. —The objections of the owners of a bustee to a standard plan how to be made.* The standard plan prepared on a report made by two officers the medical officer and the engineer—on an inspection of a bustee under the provisions of Sec. 406 of Act III B. C. of 1899 does not become bad in law because one of the officers, the engineer was not a permanent servant of the Municipality.

Where on notices under S. 408 of Act III, B. C. of 1899 having been served upon all the owners of land of a bustee one of the owners objected

to a certain proposed road in the standard plan going in a certain direction and on his objection the sub-committee decided that the road be deflected, and the standard plan thus modified was approved by the General Committee who serves notice upon the petitioner to carry out the improvements according to the standard plan so modified, and for her non-compliance prosecuted the petitioner.

Held, that the petitioner was not entitled to a fresh notice with regard to the deflection of the road in order to enable her to urge her objections to the deflection before the General Committee.

The law contemplates that all persons interested will be present before the Sub-Committee and will present not merely their own objections to the scheme but also any objection which they have to any modification of the scheme on the objections revised by others. It is the duty of each of the persons at the time when the matter is before the Sub-Committee to ascertain what the various objections of the other persons are and then to oppose those objections if he thinks it necessary. Under the Calcutta Municipal Act the Sub-Committee have power to sanction any amendment of the original plan even though the amendment be necessary for the purpose of avoiding expense and not for the purpose of improving the bustee.

The Calcutta Municipal Act gives the General Committee full discretion to proceed either under S. 406 or under S. 409.

Brett & Ryves J. J.

Sarmati v. The Corporation of Calcutta, 12 C. W. N. 116.

Civil Procedure Code Sec. 13—Dekkhan Agriculturist's Relief Act sec. 30—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekkhan Agriculturists' Relief Act to the District—Application for instalments—Res judicata.—In a suit instituted in the Court of the First Class Subordinate Judge of Ahmedabad on a promissory note an issue was raised as to whether the amount sued for should be made payable by instalments and the finding was in the negative. The suit was decreed on the 21st July 1905. The Dekkhan Agriculturists' Relief Act was extended to the Ahmedabad District on the 15th August 1905. Thereupon the defendant having applied for payment by instalments the application was dismissed on the ground that the question of instalments was *judicata*.—*Held* that section 13 of the Civil Procedure Code was not applicable. Section 20 of the Dekkhan Agriculturists' Relief Act contemplates that even when a decree has been passed which does not allow of instalments, the Court should have power to allow instalments in execution.

Jenkins C. J. & Batchelor J.

Bai Dismali v. Patel Girdhar 32 Bom. 391

———**S. 13—Resjudicata Rent, Suit for.—Mesne profits suit for.** A purchased a tenure at a sale for arrears of rent and some time after served a notice upon B, an under tenure holder under section 167 of the Bengal Tenancy Act. A then sued to eject B. and to recover Mesne profits. The Court made a decree for ejectment and allowed mesne profits from the date of the service of Notice under section 167. B, preferred an appeal, During its pendency A sued B. for rent for the period between the date of his purchase and the date of the service of notice.

Held (1) that the suit was not barred under section 12 of the Civil Procedure Code. (2) That the suit was not barred under section 13 Civil Procedure Code as A could not join claims for rent and mesne profits in previous suit.

Rampini & Mookerji J. J.

Naffar Chander Pal Chowdhary v. Munshi Mahomed Kayun. 8 Cal. L. J. 303.

———**Sec. 23—Co-trustee made as defendant—Plaint not showing that the other trustee refused—Maintainability of the suit.** A suit by one of the trustees should not be dismissed simply on the ground that the other trustee has not been shown in the plaint to have refused to be joined as co-plaintiff. *Peria Karruppan v. Velayuthan*, 29 Mad. 308., and *Pyari v. Kedar Nath*, 26 Cal. 409, followed.

Wallis J.

Rasu v. Veerasami, 4 Mad., L. T. 194.

———**Sec. 43.—Suit to recover possession—Fresh suit to recover mesne profits,** Held that a subsequent suit for mesne profits is not barred by the provisions of sec. 43 Civil Procedure Code where a suit for possession of the lands for which mesne profits are claimed has already been filed.

Benson & Wallis J. J.

Gutta Surama v. Maganti Ramendra, 4 M. L. T. 192.

———**sec. 43, 373—Limitation Act, article 106—Suit for division of alleged partnership assets—Separate suits for property at different places.**—The plaintiff sued for possession of one-half of certain property in the Moradabad district, alleging that it had been purchased out of the profits of a partnership subsisting between himself and the defendant. Other similar property in Naini Tal was mentioned in the plaint, but the plaintiff said he would bring a separate suit in respect of that property. The first suit was withdrawn, but without permission being granted to bring a fresh suit. Subsequently a second suit was brought in Naini Tal respecting the property there. The plaintiff alleged himself to be in possession of this property, but it was found that he was not. *Held* that the second suit was barred by the

operation of section 43 as well as section 373 of the Code of Civil Procedure, as also, on the finding that the partnership had been dissolved more than three years before suit, by article 106 of the second schedule to the Limitation Act.

Aikman & Karamat Husain J. J.

Niaz Ahmad v. Abdul Hamid, 30 All. 279.

———**S. 80—Notice—Service of if proper—Service on the out-door of the office.** Affixing a notice to the out-door of the office in which the person to whom the notice was addressed works as an employee is not a good service under S. 80 of the Code of Civil Procedure.

Maclean C. J. & Cox J.

Annada Krishna Dey v. Jogendra Nath Dey, 8 Cal. L. J. 294.

———**S. 103—Suit—Default of appearance—No appearance by counsel—Dismissal for default—Sufficient cause for default.** When a suit was called on for hearing neither of the plaintiff's counsel were present; but the plaintiff was present in person. However, to enable them to come and appear the defendant's counsel raised issues in the case. At the end of that time, the Court gave a permitted time for the plaintiff to appear. The plaintiff's counsel did not turn up within the time allowed, whereupon the suit was dismissed. The plaintiff then applied, under S. 103 of the Civil Procedure Code, for the restoration of the suit.

Held, that there was no sufficient cause for setting aside the order of dismissal. *Manilal v. Gulam*, 13 Bom. 12. *Somayya v. Subbamma*, 26 Mad. 599, not followed.

Russell J.

Esmail v. Haji Jan, 10 Bom. L. R. 904.

———**S. 108—Several defendants—Ex parte decree—Application to set aside by one defendant—Decree against all defendants set aside—Legality of the order.** Where a decree was passed *ex parte* against several defendants and the whole decree was set aside under S. 108, Civil Procedure Code on the application of one of the judgment-debtors. *Held* that the decree so far as it affected the defendants other than the applicant, who had shown sufficient cause with the meaning of S. 108 should not have been set aside.

Munro & Abdur Rahim J. J.

Valia v. Marutha, 4 M. L. T. 230.

———**Secs. 108, 591—Rule discharged by High Court—District Judge—Power to re open question—Order setting aside *ex parte* decree.—Appeal if open to attack in petition to High Court—Facts in judgment affidavit if necessary.** An *ex parte* decree was set aside under section 108 of the Code of Civil Procedure by the Munsiff. A rule to set aside this

order was discharged by the High Court. Subsequently on appeal from the final decree the District Judge set it aside on the ground that the order under sec. 108 was not proper.

Held that the District Judge had no jurisdiction to consider the propriety of the order after the discharge of the rule by the High Court.

Held further:—It was not open to the plaintiff to challenge the validity of the order in an appeal against the final decree; section 591 of the Code of Civil Procedure has no application to such a case.

Harrington & Mookerji J. J.

Mussamut Kariman v. A. H. Forbes, 8 Cal. L. J. 308.

———**Sec. 156**—*Failure to pay costs of adjournment—Disposal of suit thereon.* *Held*, that under sec. 156 of the Civil Procedure Code, a Court has no jurisdiction to pass an order conditioned upon payment of costs, as is provided for under sec. 373, of the C. Pro. Code.

Wallis J.

Musthan v. Natharsa, 4 M. L. T. 200.

———**S. 181**—*Duty of court—examining witnesses*—After both sides had closed their respective cases the defendant, on whom lay the burden of proving that the plaintiff had been adopted by one Sadanangir, applied for leave to examine the alleged adoptive father who was present in Court. Both parties had in the course of the trial cited Sadanangir as a witness, but neither had put him, in the witness box—*Held* that the Courts 181 below were justified in refusing to allow the examination of Sadanangir, sec. of the Code of Civil Procedure has no application in such circumstances, nor should the discretion conferred by sec. 165 be exercised in favour of a party who has deliberately closed his case without calling the best evidence available on an issue in connection with which he has the burden of proof. To countenance such a manoeuvre would only lead to laxity in the conduct of litigation. Sec 181 Code of Civil Procedure, does not require the Court to examine a witness merely because he is in attendance; it is the duty of each party to tender for examination such witnesses as he desires to have examined. *Morno v. Bheem* W. R. 291 & *Deen Dyal v. Danee Roy* 18 W. R. 185 followed.

Ramkrishna v. Kisangir 4 Nag. L. R. 129.

———**sec. 204, 551**—*Effect of dismissal of appeal—Amendment of decree—Civil Procedure Code, section 206*—*Held* that the dismissal of an appeal under section 551 of the Code of Civil Procedure is a decree and supersedes the decree of the Court below. The Court, therefore, which has taken action under section 551 is the only Court which has jurisdiction to

amend the decree under section 206 of the Code of Civil Procedure. *Uma Sundari Devi v. Bindu Bashani Chowdharani*, 24 Cal., 759 *Peary Mohan v. Mohendra Nath*, 5 C. L. J. 566, and *Munisami Naidu v. Munisami Reddi*, 22 Mad. 293, followed. *Karmat Husain J.*

Asma Bibi v. Ahmad Husain, 30 All. 290.

———**sec. 230**—*Agreement under sec. 257 A.—sanction—Limitation—Res judicata—Mistake of Law.*—Held that an order sanctioning a compromise under sec. 257 A is neither a new decree nor an order subsequent to decree directing payment of money within the meaning of sec. 230 (b), Civil Procedure Code.

Held further that a decision come to on a mistake of law will not operate as res-judicata in subsequent proceedings. *Narayansami* 30 Mad. 461). *Aitamma v. Naraina*, 30 Mad. 504 referred to.

Wallis & Munro J. J.

R. M. P. L. v. Raja Visvanath 4 M. L. T. 233.

———**sec. 244.**—*Representative—auction purchaser at sale in execution of decree against transferee of occupancy holding—Decree against recorded tenant*—The purchaser at an auction held in execution of a decree against the unregistered transferee of an occupancy holding is a representative of the recorded tenant within the meaning of section 244. Civil Procedure Code and is entitled to apply for the setting aside of a sale in execution of a rent decree against the recorded tenant on the ground of fraud.

Caspersz and Sharfuddin J. J.

Haradhan Rakshit v. Grish Chandra Mukkerji 8 Cal. L. J. 327.

———**sec. 258**—*Adjustment in part of decree—necessary to be certified.*—Where there is a money decree against two defendants an agreement discharging one of them, is an adjustment in part of the decree and so requires to be certified.

Wallis & Munro J. J.

Mahomed v. Mahomed Munawar 4 M. L. T. 229.

———**sec. 283**—*Suit for declaration of title by person whose objections to execution have been disallowed—Burden of proof*—Held that a party intervening in the execution department, and failing in his objections to an attachment, and consequently being obliged to bring a suit under section 283 of the Code of Civil Procedure, must give *prima facie* evidence to establish the genuineness of the document upon which he relies. *Tulsi Rai v. Ram Das*, Weekly Notes, 1887, p. 71 *Afzal Begam v. Muhammad Obaidat-ullah Khan*, Weekly Notes, 1899, p. 220. *Raw Nath v. Bindraban* 18 All. 369, and *Govind Atmaram v. Santai*, 12 Bom., 270, followed. *Suba*

Bibi v. Bal Gobind Das, 3 All., 178, discussed.

Stanley C. J. & Karmat Husain J.

Nannhi Jan v. Bhuri, 30 All. 321.

———**Sec. 283—Insolvent judgment-debtor—Attaching of crops by decree-holder—Claim to the crops allowed—Regular suit by decree-holder—Question whether decree-holder can sue.** Where a claim to the property of an insolvent attached in execution is allowed, the attaching creditor is entitled to sue to set aside the summary order passed on the claim petition even without making the official assignee a party to the suit. The decree-holder in such a case, is, however, not entitled to a decree declaring the property liable to be attached, but only to a decree that the property is that of the insolvent judgment-debtors.

Bibi v. Ganahyam, 17 M. L. J. 618, followed. *Sadolin v. W. Spicers*, 3 Bom. 438, distinguished.

Wallis & Munro J. J.

Annapurni v. Subramanian, 4 M. L. T. 197.

———**Sec. 294—Execution of decree—Decree-holder bidding for property with permission—Right to set off amount due to decree-holder against purchase money.** The first paragraph of section 294 of the Civil Procedure Code requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which the permission to bid is granted that there should not be this right of set off. In such a case no set off can be directed.

Jenkins O J. & Batchelor J.

Hazarimal v. Namdev, 32 Bom. 379.

———**Secs. 306, 293—Execution of decree—Sale in execution—Non-payment by purchaser of deposit required by law—Fresh sale—Claim by auction purchaser for difference of price on resale.** Certain immoveable property was put up to auction in execution of a decree and purchased by A. B., but the purchaser did not at once make the deposit required by sec. 306 of the Code of Civil Procedure, and the property was subsequently—but not “forthwith”—put up again to auction and sold for a considerably less sum to the decree-holder. Held that the first sale was not merely irregular but no sale at all, and that the decree-holder was not entitled to claim against the first purchaser under section 213 of the Code, compensation for the loss resulting on the second sale. *Intizam Ali Khan v. Naran Singh*, 5 All., 316 followed.

Stanley C. J. & Burkitt J.

Amir Begam v. The Bank of Upper India, Limited, 30 All. 273.

———**Sec. 310A.**—*Beneficial owner if entitled to apply*—Person whose property has been sold. A beneficial owner is entitled to apply under section 310A for the setting aside of a sale in execution of a decree for money against the beneficiary. He is a person whose property has been sold under the decree.
Haarrington & Mookerji J. J.

Baburan Munder v. Ram Sahi Sahoo, 8 Cal. L. J. 305.

———**Secs. 372, 234 and**—*Money claim—Transfer pending suit—Transferee not made a party to the decree—Whether transferee is legal representative*. M, obtained a simple money decree against Arbuthnot & Co., in respect of certain transactions he had of their rice mill at Tiruvalur. During the pendency of the suit Arbuthnot & Co., transferred the rice mill at Tiruvalur to Arbuthnot's Industrials with all assets and liabilities. In execution Arbuthnot's Industrial was sought to be made the legal representative of Arbuthnot & Co.

Held that neither sec. 234 nor sec. 372 applied to the case and Arbuthnot's Industrial Company could not be brought on record as legal representatives in execution.
Benson & Munro J. J.

Arbuthnot's Industrials Ltd. v. Muthu Chettiar, 4 M L. T. 190.

———**S. 424**—*Notice under suit against public officers*. When public officers are sued not in their admitted official capacity, but as individual trespassers, no notice under S. 424 of the Code of Civil Procedure is necessary.

Reason in a case where such a notice would be otherwise necessary, so far as the suits ought relief by an injunction to restrain the commission of an act, no notice under that section would be necessary.
Woodroffe J.

Ganada Sundari Chaudhuruni v Nalini Rajan Reha, 12 C. W. N. 1066.

———**S. 461**—*Object—Withdrawal of money deposited—Application for—Joint Hindu family—Mitakshara school—Managing member—Rights of Joint brothers—Surety bond*. A managing member of a joint family governed by the Mitakshara system of Hindu law who was appointed guardian *ad litem* of his minor brother for the purpose of a rent suit in which both the brothers obtained a decree for arrears of rent against their tenant, can withdraw the money deposited in court by the tenant to the credit of himself and the minor, without obtaining leave of the Court under S. 461 of the Code of Civil Procedure.

S. 461 of the Code of Civil Procedure does not contemplate an execution of a bond for an indefinite amount for the benefit of a co-partener.

Per Casperez J.—The object of S. 461 of the Code of Civil Procedure is to protect property received by guardians *ad litem* on behalf of the minors

they represent. There is nothing in the words of the section from which any exception may be deduced.

The managing member of a Mitakshara family cannot sue without joining the other members as parties to the suit. There may be cases in which a manager alone can sue to recover rent, for example if he has given a lease in his own name and the suit is for rent due in terms of the lease.

Joint brothers cannot be sureties one of another in a Mitakshara family. Hence the adult plaintiff cannot be called upon to furnish security in respect of money to be received by him on behalf of his minor brother who was made a co-plaintiff in order to obtain a joint decree for rent.

Mitra & Casperaz, J. J.

Harihar Pershad Singh v. Mathura Lal, 8 C. L. J. 256.

———S. 462.—*Procedure in sanctioning compromise.* The Court in sanctioning a compromise on behalf of an infant under S. 462 of the Code of Civil Procedure should record the fact that the application was made to it by the next friend or guardian, that the terms of the compromise were considered by it, and should in terms state that the question whether the compromise was for the benefit of the infant was considered. From the mere fact that the Court passed the decree in accordance with the compromise it cannot be inferred that any of those steps preliminary and necessary to the making of the decree had been taken by the Court.

Mookerjee & Holmwood J. J.

Biku Halwai v. Mohesh Halwai, 8 Cal. L. J. 266.

———S. 462.—*Express leave—Duty of Court.* In order that a compromise may be binding upon a minor the leave of the Court must be express and further it must be arrived at upon the exercise of judicial discretion as to the propriety of the compromise in the interests of the minor.

Where a decree was passed without any judicial enquiry or finding as to whether the compromise was for the benefit of the minor, although a formal order of sanction to file the compromise petition was given to an official of the Court who acted as the minors' guardian *ad litem*.

Held, that the decree was inoperative. When the Court permits a compromise it must be presumed in the absence of evidence to the contrary that it gave due consideration to the matter.

Holmwood & Sharfuddin, J. J.

Krishna Pershad Roy v. Romesh Chunder Mandol, 8 Cal. L. J. 274.

———Ss. 574 and 551.—*Procedure—Appeal summarily dismissed—Court not bound to record a full judgment.* *Held* that the provisions of S. 574 of the Code of Civil Procedure are not applicable in their entirety

to the case of an appeal dismissed under S. 551 of the Code. *Ram Deba v. Bhojo Nath Saikia*, 25 Cal. 97 dissented from.

Burkitt & Aikman, J. J.

Samin Hasan v. Piran, 30 All. 319.

———S. 575—*Two Judges hearing an appeal and differing in their opinions—Whether appeal should be dismissed.* The two Judges before whom these appeals were heard differed in their opinions. One considered that the accident was due to the negligence of the defendants' servants, the other was of opinion that the facts shewed that the defendants were not guilty of negligence.

Held, that under S. 575 of the Civil Procedure Code both the appeals must be dismissed, each party to pay his or her own costs.

Irwin C. J. & Ormond J.

Meerama v. Babu Bhikaraj 14 Bur. L. R. 257.

———Ss. 629, 634—*Review on the ground of S. 462, C. P. Code, not complied with.* Under S. 629 of the Code of Civil Procedure, it is open to the appellant on the appeal from the final decree, to take objection to the order passed on the application for review.

A Judge (not being a Judge of the High Court) other than a Judge who delivered the judgment has no jurisdiction to grant an application for review on the ground that no leave or consent of the Court under S. 462 of the Code of Civil Procedure had been given to the guardian *ad litem* to refer the matter in dispute between the parties to the suit to arbitration.

Semble.—Such leave or consent of the Court to the application by all the parties to refer the matter to arbitration is not necessary under S. 462 of the Code of Civil Procedure

Maclean C. J. & Coxe J.

Annada Krishna Dey v. Jogendra Nath Dey, 8 Cal. L. J. 294.

Construction of documents—*Documents executed in the mofussil—Contracts of the people of India—Liberal construction—Regard to be had to all the circumstances of transaction—Intention to make land security for payment of debt—Charge—Transfer of Property Act, sec. 100.*—Documents executed in the mofussil come within the statement of the Privy Council in *Hunoomanpersaud Panday v. Mussumat Babooes Munraj Koonwars*, (1856) 6 Moo. 1. A. 411 that "deeds and the contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be regarded so much as the real meaning of the parties which the transaction discloses." Where having regard to all the circumstances of a transaction there remains no doubt that the documents are sufficient and do show an intention to make the land security for the payment of the debt

mentioned therein, the documents create a charge.

Jenkins O, J. & Batchelor J.

Janardan v. Anant, 32 Bom. 386.

Contract—Wagering contract—Badni—Principal & Agent—Their respective rights and liabilities in wagering contracts—Cash payment—Enforceable liability defined—Indian Contract Act, IX of 1872, sec. 30. *Held*, that (1) a cash payment or incurring an enforceable liability, which is equivalent to cash payment, by an agent on account of a single badni transaction entered into on behalf of a principal is legally recoverable from the principal. An “enforceable liability” means a liability which the agent cannot resist or repudiate at Law.

Held, also, that mutual adjustment of account with the party in the following cases also amounts to a cash payment.

(1) If the agent has already dealings with the third party and is owed money by him on accounts with which the principal has no concern, and the sum lost, being less than the sum due to the agent, is settled by a credit in agent's books and a debit in the third party's books.

(2) In a similar case if the debt owed to the agent is less than the sum lost by him on account of this principal and the matter is settled by a debit and credit as aforesaid, *plus* a payment in cash of balance due by the agent.

(3) If in such a case the sum already owed to the agent by the third party equal to the sum lost as aforesaid to the third party and the agent authorized that party to set off one against the other in his books and treat the account as squared.

Held, further, that if an agent dealing *badni* for a principal loses a sum of money on the transaction and, having no previous account with the third party authorizes him to enter up in his books a debit against him (the agent) he cannot recover the amount thus debited from his principal without 1st paying it to the third party.

F. B.

Behari Lal v. Parbhu Lal, 3 P. W. R. 457.

Contract Act sec. 16—Good faith—undue influence.—Sec. 16 of the Contract Act only presumes undue influence by a person in a position to dominate the will of another, when the contract appears on the face of it to be unconscionable.

To prove “good faith” of a transaction in which one party stands in a fiduciary relationship to the other, it is certainly not necessary to prove that all the accounts on which the contract is based are correct.

Ooze & Dass J. J.

Shamuldhons v. Srimutty 12 C. W. N. 1102.

—sec. 25—*Limitation Act section 19—Acknowledgment—promise to pay a time-barred debt.*—Where it is sought to recover a time-barred debt on the strength of a subsequent promise to pay made in writing by the debtor, the document relied on must contain an express promise to pay. A promise to pay cannot be inferred from a mere acknowledgment of the debt. *Maniram Seth v. Seth Rupchand*, 33 Cal., 1047, distinguished. *Aikman & Karmat Husain J. J.*

Gobind Das v. Sarju Das, 30 All. 268.

Court of Wards Act—(Bengal) object of—when can take possession.—The Court of Wards can take possession only of an estate of a minor, if he can be said to be the proprietor thereof within the meaning of the Court of Wards Act. It has no right to take over an estate from an executor in whom the estate is vested in law, until the infant beneficiary becomes the proprietor.

The Court of Wards Act was never intended to, and the language thereof does not warrant the construction that it should have power to override private rights such as the wishes of testators and proprietors generally in desiring and directing that their estate should vest in and be managed by an executor or in creating a trust inter vivos for the benefit of an infant.

It is not for the Court of Wards to determine whether there has been mal-administration of an estate by an executrix and on its own determination take possession thereof on behalf of an infant residuary legatee before the administration is complete. *Woodroffe J.*

Ganda Sunderi Chaudhurani v. Nalini Ranjan Reha 12 C.W.N. 1066.

Defamation—Privilege—accused person—Reply—to notice.—No action for libel or slander lies whether against judges, counsel, witnesses or parties for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognised by law. This principle applies equally in the case of accused persons in respect of words written or spoken for purposes of defence. This privilege extends to statements made in reply to notices of action so long as the allegation is confined to the matter in hand and is relevant. *Benson & Sankaran J. J.*

A. P. Pachaiperamal v. Desi Thangam 18 M. L. J. 353.

Dekkhan Agriculturists' Relief Act (XVII of 1879). S. 20.—*Civil Procedure Code, S. 13—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekkhan Agriculturists' Relief Act to the District—Application for instalments—Res judicata.* In a suit instituted in the Court of the First Class Subordinate Judge of Ahmedabad on a promissory note an issue was raised as to

whether the amount sued for should be made payable by instalments and the finding was in the negative. The suit was decreed on the 21st July 1905. The Dekkhan Agriculturists' Relief Act was extended to the Ahmedabad District on the 15th August 1905. Thereupon the defendant having applied for payment by instalments the application was dismissed on the ground that the question of instalments was *res judicata*.

Held, that S. 13 of the Civil Procedure Code was not applicable. S. 20 of the Dekkhan Agriculturists' Relief Act contemplates that even when a decree has been passed which does not allow of instalments, the Court should have power to allow instalments in execution.

Jenkins O. J. & Batchelor J.

Bai Diwali v. Patel Girdhar, 32 Bom. 391.

—secs 46, 47—Conciliator's certificate obtained in the name of one co-parcener—Suit on behalf of the family—The remaining co-parceners joinings as plaintiff to the suit—Hindu Law—Manager—Powers to represent the family. In a suit brought on behalf of a joint Hindu family the Conciliator's certificate required by section 46 of the Dekkhan Agriculturists Relief Act was obtained in the name of one of the co-parceners alone; but all the co-parceners joined as plaintiffs and admitted in the plaint that the certificate had been obtained on behalf of the joint family. It was objected to this suit that as the certificate was in the name of one of the plaintiffs the suit could not lie. *Held*, overruling the objection, that the certificate obtained by one of the co-parceners, who was either the managing member of the family at the time the certificate was obtained or who though not manager obtained it with the consent and on behalf of the joint family, acting as its agent, was sufficient to support the suit.

Chandavarkar & Knight J. J.

Vithu Dhondi v. Babaji, 32 Bom. 375.

Easement—Way, right of Implied grant—Alternative defences—No objection—No prejudice. No grant of an easement can be implied from a defendant using a land for eight years without any objection on the part of the plaintiff.

Per Mookerjee J.—There is no implied reservation of an easement in case one transfers a part of his land over which he has previously exercised a privilege in favour of the land he retains, unless the burden is apparent, continuous and strictly necessary for the enjoyment of the land retained.

Implication of a grant of easement upon the severance of tenement extends to a way which is a formed or metalled road,

It is open to a defendant to set up alternative defences, e. g. to set up as a defence that he was the owner of the property in dispute and if he was not the owner he had a right of easement over it.

A plaintiff will not be allowed to raise any objection as to defendant's setting up alternative defences at the appellate stage of the suit, when no such objection was raised in the Court of first instance and it was not shown that he was in any way prejudiced.

Maclean C. J. & Holmwood J.

Purnendu Narain Roy, v. Dwijendra Narain Roy, 8 Cal. L. J. 289.

Estoppel—*Recital in a deed, effect of, in an action collateral to it—Promise—Transfer of the chance of an heir-apparent, validity of—Mutation of names—Possession, transfer of—Transfer of Property Act, s. 6 (a) Evidence Act, s. 115.*) A transfer of the chance of an heir-apparent succeeding to an estate is invalid and cannot operate to transfer any interest in the property.

Neither mutation of names nor transfer of possession can pass any title where the law requires a registered deed.

Where a distinct statement of a particular fact is made in a recital of a bond and a contract is made with reference to that recital, *held* that the party making the statement would not be estopped from disputing the fact so admitted in an action not founded on the deed but wholly collateral to it.

Held, also that a promise not being a representation as to an existing fact, cannot by itself be the foundation of an estoppel.

Chamier J. C.

Bajrang Singh v. Bhagwan Bakhsh Singh, 11 O. C. 301.

Evidence Act, S. 32—*Partnership—Account books of the partnership—Entries in them binding on partners inter se—A partner can surcharge and falsify the accounts—Sleeping or dormant partner—Relation between him and the managing partner—Accounts—Directions to Commissioner.* Where account books are admitted in evidence before the Commissioner under S. 32 of the Evidence Act as having been kept in the ordinary course of business by persons deceased, it is in the discretion of the Court to hold that they are sufficient evidence of the transaction to which the entries of the book relate without further proof. *Rampytra-bai v. Bhatji* 6 Bom. L. R. 50 followed.

The partnership books being accessible to all the partners and being kept more or less under the surveillance of them are prima facie evidence against each of them; and also for any of them against the others. But they are not conclusive evidence if the person complaining of them can by clear evidence show that there is an error in the books. When there

is a question of surcharging and falsifying accounts, the case alleged must be clearly proved by the person impeaching them, and if there is any doubt it will be determined against him. *MacLeod J.*

D. J. A. J. Kure v. Govind Narain Bapat, 10 Bom. L. R. 811.

—S. 92—*Formality of document*. In considering the degree of formality of the document, the fact that it was not drawn up by a skilled lawyer is of much more importance than the fact that it was registered.

The document contained (inter alia) the following: "when any money is obtained by sale of the goods of the said mortgaged shop, it should not be paid to others in consideration of other debts, but it shall be paid to creditor, Chokalingam Chetty, in consideration of this principal and interest.

Held that this was not inconsistent with the oral agreement by which the sale proceeds, after being so paid to Chokalingam, were paid back wholly or partly to the mortgagor to enable him to replenish his stock, and by which the stock so replenished was recovered by the mortgagee.

Held, therefore, that the evidence of the oral agreement was admissible under proviso 2 to S. 92 of the Evidence Act. *Irwin C. J.*

S. N. Nachiappa v. A. K. A. M. Chokalingam, 14 Bur. L. R. 231.

Executor—Will—Intermeddling with estate—Degrees of interference necessary to charge executor—Suit for account against executor—Account for or forgoing of wilful default. In law a very small interference or intermeddling with the estate of a testator on the part of a party appointed executor under a will is sufficient to charge him with liability as executor. An executor once having acted unquestionably as an executor cannot renounce that character and all the liabilities which attach to it and having once acted, the subsequent renunciation is void, and he continues liable to be sued in the character of an executor.

Modern practice allows of an order charging wilful default being made at any time during the action on a proper case being shown.

Davar J.

Ayresolai v. Eliahim, 32 B m. 334.

Fatal Accidents Act (13 of 1855)—Damages—Measure of. *Held* that in assessing damages under Act 13 of 1855, the pecuniary loss sustained by the family of the deceased is all that can be considered and that nothing can be allowed to the survivors as compensation for mental suffering, etc. *Mac J.*

Ratnal v. The Madras Railway Co., 4 M. L. L. 238.

Grant—Grant by Government of the revenue of a village as a unit of a settlement—Cultivation by grantee of uncultivated or unassessed land—Grantee can do so and profit thereby.) When Government grants the revenue of a village considered as a unit of assessment, and in course of time the grantee is able to bring under cultivation land which had previously been uncultivated or even unassessed, it is open to him under the grant to do so and to profit by the new cultivation.

Jenkins C. J. & Batchelor. J.

Balvant Ramchandra v. Secretary of State. Bom. 432

Guardian and Wards Act (8 of 1890) S. 29—Court's duty in granting leave—Compromise—Certificated guardian if to take permission of Judge—Review—Suit to set aside decree—If maintainable—Fraud—Valuation—Jurisdiction. A compromise of a suit is not one of the acts contemplated in S. 29 of the Guardian and Wards Act; hence a certificated guardian can compromise a suit without obtaining the sanction of the District Judge. The statutory provision for safe-guarding the interests of minors in suits is contained in S. 462 of the Code of Civil Procedure.

Mookerjee & Holmwood J. J.

Biku Halwai v. Mohesh Halwai, 8 Cal. L. J. 266.

High Court—Jurisdiction—Immoveable property. The High Court may entertain an action in respect of immoveable property provided that a portion of such property is within the jurisdiction.

Where although but a portion of the estate regarding which certain declarations and injunction are sought in an action is within its jurisdiction the High Court has power to grant the same declarations and injunction as regards the whole estate.

Woodruffe J.

Ganada Sundari Chaudhurani v. Nalini Ranjan Raha, 12 C.W.N. 1066.

High Court Rules—Rule No. 511—Bill of costs—Order for taxation—Business not transacted in Court—Practice] Rule 544 of the Rules of the High Court does not empower a Judge to make an order on an attorney's application for taxation of his bill of costs for business not transacted in Court, unless such order be by consent, and the Court has not any inherent power on which the jurisdiction can be vested. *Sayers v. Walond* (1822) 1 Sim. and St. 97, followed. *Jenkins C. J. & Batchelor J. J.*

Bai Dossibai v. Crawford, Brown & Co., 32 Bom. 428

Hindu Law.—Joint family—Manager—Suit on behalf of the family—Powers of manager. The rule of Hindu law is that a joint family is represented in all transactions or concerns with the outside world by its *karta* (manager), provided there are for the benefit or necessity of the

family; and that any co-parcener who does not occupy that position of manager can represent and bind the family in such transactions or concerns, provided he was either previously authorized to represent it or, in the absence of such authority, the other co-parceners subsequently by words or conduct ratified his acts. *Chandavarkar & Knight J. J.*

Vithu Dhondi v. Babaji, 32 Bom. 375.

—————**Inheritance—Exclusion from inheritance—Deaf and dumb son—Vesting of the estate in the widow of the last male holder—Subsequent birth of a son to one of the disqualified sons—Divesting of estate.** M., a Hindu, died leaving him surviving a widow and three sons C. and two others, all of whom were born deaf and dumb. His widow succeeded to the estate, the sons being disqualified from inheriting. Later on C. married and a son was born to him. The widow thereafter sold the property to plaintiffs who now sued to recover possession from the wife and son of C. It was contended for the defendants that the widow succeeding to her husband, took only a widow's estate and that that estate was divested by the after born son of C.

Held, that the plaintiffs were entitled to succeed. Both in fact and in contemplation of law C.'s son had no existence when the estate vested in the widow; and his subsequent birth could not divest the estate.

Held, further, that C.'s son stood in no better position than would have been occupied by his father C. if the latter's disqualification had been removed after the widow had succeeded to the inheritance; and in that case, the widow's title would prevail inasmuch as it was superior to C.'s while his disqualification endured. *Batchelor & Heaton J. J.*

Porwadewa v. Venkatesh, 32 Bom 455.

—————**Joint family—Son's interest in a tenant's holding of the father—Relinquishment by father without son's consent, validity of.** *Held* that Hindu sons living jointly with their father are not the co-tenants of his holding. A relinquishment of his holding made by the father without the consent of his sons is perfectly valid. *Pigott J. C.*

Sarabjit Singh v. Mohan Singh, 11 O. C. 252.

—————**Primogeniture.—Restriction on alienation.** Where there is a custom of primogeniture, there is no restriction on alienation by the incumbents for the time being, unless a special custom is proved to the contrary. *Holmwood & Sharfuddin J. J.*

Krishna Pershad Roy v. Romesh Chander Mandol, 8 Cal. L. J. 274

—————**Religious Endowment—Endowment to take effect after a life estate.** *Held* that there is no objection to the limitation by a Hindu testator or settlor, of a life estate followed by an endowment of property to religious or charitable purposes. *Stanley, G. J. & Burkitt J.*

Gobind Pershad v. Gombi, 30 All. 288.

———**Stridhan**—*Mitakshara*—*Maiden's stridhan*—*Priority between maternal grandmother and father's mother's sister.* Under the *Mitakshara*, the father's mother's sister is entitled to succeed to the stridhan of a maiden in preference to her maternal grandfather.

Chandavarkar & Heaton J. J.

Janglutar v. Jetha Appaji, 32 Bom. 409.

———**Widow**—*Alienation of portion of estate*—*Consent of next reversioner*—*Validity.* An alienation by a widow of a portion of her husband's estate is valid if made with the consent of the next reversioner. The principle is not restricted to the case of alienation of the whole of the property.

Rampini C. J. & Ryves J.

Pulin Chander Mandal v. Balai Malal, 8 Cal. L. J. 280.

———**Will**—*Construction of*—*Feeding and paying Brahmins, if valid bequest.* A direction in a Will for feeding and paying the Brahmins on the day following the light of the Sivaratri is not invalid. *Fletcher J.*

Kadar v. Alut, 12 C. W. N. 1083.

—————**Construction**—*'Gift to T for her sustenance and other things.'* Where the bequest was in the following words. 'Given to Tirumalai Ammal,—widow of my son Sami Naiken who died issueless for her sustenance and other things as requested by her and later on by a general clause, the testator said 'I have given away nunja, punja and other lands to the other persons as gift and out of sympathy so that they may enjoy them as they like with all the ownership rights, with power of alienation by gift, sale, exchange etc., and it was found that the land given to Tirumalai Ammal was included in the *gaveties*. Held that the testator gave an absolute estate to Tirumalai Ammal.

Arnold White C. J. & Miller J.

Ramchandra v. Vijayaragavalu, 4 M. L. T. 198.

———**Will**—*Construction of*—*Legatee must be in existence at the date of the testator's death*—*Appointed daughter, custom relating to—Indian Succession Act, s 100.*—The will of Hindu testator, to which the provisions of the Hindu Will Act did not apply, contained, *inter alia*, the following paragraph:—"We have no male issue. As a suitable boy could not be found among the *gnatis*, she shall make an adoption according to her will and in accordance with the law. If no boy is found and if our daughter Venkata Chinnayya has a son, that boy becomes a 'Dauhitra karta' (heir as daughter's son) according to the law: so, that boy alone should become the 'karta' for the entire property belonging to me. According to the law the 'karta' is in our wife. So our funeral rites as well

as the acts (rites) to be done through our wife alone" At the testator's death his daughter was five years old. Subsequently, she had sons, all of whom predeceased her. The testator's widow died in 1893 and the daughter in 1902. The present suit was brought by the daughter's husband claiming as the heir of his eldest son, who was living in 1893 and who, it was contended, took the estate on the widow's death under the will. The plaintiff contended that under the will the daughter's son had all the rights of an adopted son:—*Held*, on the construction of the will—(1) That the testator's daughter was not 'appointed' by him to raise a son for him. The practice of 'appointing' a daughter is now generally reputed to be obsolete and it lies on the person who alleges that she was so appointed by the will to prove that such a custom exists, as the words of the will do not warrant the inference that the testator intended to revive a dead custom, (2) That the daughter's sons, not having been born at the testator's death, took nothing under the will. Section 100 of the Succession Act contemplates a power of disposition extending further in time than that allowed by the Hindu Law and the principle enacted by that section does not apply to the case.

Jenson & Miller J. J.

Sri Raju Venkata Narasimha Appa Row v. Sri Rajah Suraneni

Venkata Purushothama Jagannadha Gopala Row, 31 Mad., 310.

———**Will—Power of appointment, validity of—Person appointed, qualification necessary.**—*Held*, that a Hindu testator has a right to grant a power of appointment, to a person named in his will by which the final devolution of his estate should be regulated at the termination of a life estate created under the will.

Held further, that the person capable of taking under the will must be such a person as could take a gift *inter vivos* and therefore must either in fact or in contemplation of law be in existence at the death of the testator.

Evans & Pigott J. J.

Narayan Singh v. Lal Ramesh Singh 11 O. C. 271.

———**Will—Widow—Joint bequest—Absolute Estate.** Where a Hindu made a will bequeathing some of his immoveable property to one of his sons and his wife jointly, *held*, that even if it be granted that the widow had only a life estate in her share of the property, the two together could take an absolute estate in the same.

Tikumdas v. Phatumal, 1 Sind L. R. 249.

Insolvent—Judgment debtor—Attachment—Sale of his share in ancestral property—Partition suit by purchaser in execution maintainability thereof.—*sec. 7 of the Indian Insolvency Act 171 and 12 vic. Cap. 211.*—Where a purchaser in execution purchased the interest of the judgment-

debtor who was a member of an undivided Hindu family and who had become an insolvent prior to the execution sale.

Held in a suit for partition by the purchaser in execution against the other members of the joint family that the judgement-debtor had no saleable interest in the property as under sec. 7 of the Insolvency act, his property had vested in the official assignee.

Munro & Sankaran Nair J. J.

Sundarappayar v. Rama, aru, aru Rama Arunachella Chettian. 4 M. L. T. 188.

Jurisdiction—Succession to foreign state—Tipperah Raj, succession to—Act of State—Declaratory suit—Contingent right—Right of suit. The Courts in British India have no jurisdiction to decide a question as to who is entitled to succeed to the Raj of a Foreign Sovereign State or to any immovable property, which goes with the raj, although situated in British territory.

Special Bench.

Samarendra Chundra, 35 Calc. 777.

——— **Waiver—Point in second appeal.** Where the plaintiffs valued their claim in the Munsiff's Court at Rs. 500 and issue was taken on the point which if decided in favour of the defendant would have ousted the Munsiff's jurisdiction) but no evidence was adduced there was no waiver of jurisdiction and the High Court can therefore allow it on second appeal.

Mookerjee & Holmwood J. J.

Biku Halwai v. Mohesh Halwai, 8 Cal. L. J. 267.

Kathiawar—Bantwa Memons. The Bantwa Memons are to be treated as the Cutchi Memons; the Cutchi Memons (like khoja converts from Hinduism) are governed by Hindu Law in all general questions of inheritance and succession; but if a Memon son assert a right to partition against a living unwilling father, he must prove a caste custom; a mother or a step mother has a higher status than a mere coparcener's widow and she is entitled to a share equal to that of her husband but from that share must be deducted the value of any stridhan received by her as a gift from her father-in-law or her husband.

Memon Ashrah nan v. Memon Osman, 18 Kat. L. R. 196.

——— **Limitation Art. 95—Knowledge—Meaning of** The knowledge intended by Art. 95 of the Limitation Act is not mere suspicion but such definite knowledge as enable; the person defrauded to seek his remedy in Court means of knowledge and knowledge are not in a general sense, identical.

Soni Kanji v. Wala Bhima, 18 Kat. L. R. 167.

—**Registration Act Sec. 17—Registration.** Where the custom created the right, and not the document, which simply admitted the existence of the custom, the document was held not to require registration for a purely collateral purpose creating no interest in immoveable property.

Memon Adhrahman v. Memon Oeman, 18 Kat. L. R. 196.

—**Sanction—Pending civil appeal.** If a defendant whose prosecution has been ordered in a suit brought to set aside a decree obtained by fraud, requests the appellate Court to hear his appeal before criminal proceedings have begun, the question of fraud should be thoroughly dealt with.

Soni Kanji v. Wala Bhima, 18 K. L. R. 196.

Land-Holder and Tenant—Partition—Rights of tenants in respect of houses sites in the abadi.—As the result of the partition of a village hitherto forming one mahal into two mahals the occupancy holding of a tenant fell into one mahal owned by one co-sharer, whilst a house which the tenant and his predecessors in title had occupied for a considerable period as appurtenant to the agricultural holding fell into the other mahal owned by the other co-sharer. *Held* that the partition effected no change in the position of the tenant: so long as he continued in possession of his occupancy holding he could not be ejected from his house in the abadi of the village, nor could he be required to pay rent therefor. *Dharam Singh v. Bhoolar*, Weekly Notes, 1908, p. 123, followed *Sundar Lal v. Chajju*, Weekly Notes, 1901, p. 42, distinguished. *Panna v. Nasir Hussain*, Weekly Notes, 1902, p. 60, doubted. (F. B.)

Saddu v. Bihari Singh, 30 All. 282.

Landlord and Tenant—Right of Tenant to cut trees other than fruit bearing ones.—Held that a landlord is entitled to restrain the tenant from cutting down fruit-bearing trees.

Sankaran Nair & Abdur Rahim J. J.

Rajai Thimmonarayanum Bahadur Garu v. P. Rama Rayanum Garu 4. M. L. T. 187.

—**Ejectment—notice to quit—Interesse termini—persons having rights of—Form of notice—Damages—acceptance of rent after expiry of notice to quit if waiver.**—An *interesse termini* is an existing real right which gives the owner, thereof an immediate right of entry and consequently entitles him to serve a notice to quit to the tenant in possession. The plaintiff who had an *interesse termini* gave notice to quit, through his attorneys, to the Defendant, a tenant in possession in the following terms:—We give you notice that our client will require you to vacate and

give up possession of the premises on the 24th February next and that should you fail to comply with the request our client will take proceedings against you to eject you from the premises and he will charge you the sum of Rs. 350 per mensem as damages sustained by him during such period as you continue in possession after the 29th proximo."

Held it was good clear notice to quit and the addition of the second portion of the notice did not vitiate it.

The Defendant began to occupy the tenement from the 1st April 1904 and submitted that the notice to quit ought to have been made to expire on the 1st March and not the 29th February.

Held, the notice to expire on the 29th February was good, although it would be more usual to make the notice expire on the 1st March.

A Plaintiff who has an interest terminus may if his right to immediate entry is interfered with maintain an action for damages. *Fletcher J.*

Adolphe Shrager v. Emma Price 12 C. W. N. 1060.

Landlord and Tenant—Tortious eviction—Suspension of rent—Act Government Servant—Authorized by Statute—Effect of—The plaintiff sued the Manager, Encumbered Estates, for an injunction restraining him from recovering by warrant the rent payable by the plaintiff under a lease taken by him from the defendant and for damages, alleging that subsequent to the lease, the Executive Engineer, Public Works Department, had "illegally" closed the Canal by which the lands leased out were watered, and had thus deprived them of their utility.

Held, that the lessor's covenant for possession without interruption is not covenant against tortious eviction, and the act complained of, being the illegal act of the Executive Engineer, the plaintiff's remedy was against the Executive Engineer, and defendant.

Held, further that in so doing, the Executive Engineer was not acting as the Agent of Government (i. e., of the alleged paramount title), as he had been vested with authority by the Statute and not by the will of Government.

Dayomal Adatmal v. The Manager, Encumbered Estates in Sind,
1 Sind L. R. 244.

Land Revenue Act (III of 1901) (N.W.P.) s. 142.—Purchaser's liability for arrears of Government Revenue—Liability as between purchaser and original co-sharer—Contribution between persons equally liable for payment—Contract Act, s. 69.—Held, that the object of the second part of the first clause of section 142 of Act III of 1901 is not to transfer the liability for the revenue from one person to another but to make the person succeeding to the property liable in addition to those already liable,

Held further, that as between a vendee and the vendor, in the absence of a contract to the contrary, the responsibility for payment of the arrears of revenue rests on the latter who enjoyed the property during the time for which the arrears were payable.

Held also, that sec. 69 of the Contract Act applies to cases in which both plaintiff and defendant were liable for a payment which has been made by the plaintiff alone.

Chemier & Evans J. C.

Jagole v. Razawand Singh 11. O. C. 279.

Land Acquisition—Apportionment—Landlord and tenant—Bengal Tenancy Act, S. 50, applicability of—Presumption of permanency of holding—Compensation money. In apportioning compensation money between the landlord and tenant in a Land Acquisition proceeding, S. 50 of the Bengal Tenancy Act has no direct application, but the principle involved in that section is a useful guide to the Courts in matters of this nature.

Maclean C. J. & Coxe J.

Nanda Lal Goswami v. Atarmani Dasee, 35 Cal. 763.

Legatee—Residuary—When estate vests in. A residuary legatee does not become the "proprietor" of the estate until the administration has been completed and the residue ascertained and made over by the executors to him.

Woodroffe J.

Ganada Sundari Chaudhurani v. Nalini Ranjan Raha, 12 C.W.N. 1065.

Libel—Privilege—Trade protective society—Information as to position of business men supplied to subscribers for consideration—Volunteering of information—Welfare of society not served by such business—American authorities—Value of.—The defendants carried on the business of a trade protective society, their business consisting in obtaining information with reference to the commercial standing and positions of persons in the state of New South Wales and elsewhere and in communicating such information confidentially to subscribers to the agency in response to specific and confidential enquiry on their part.

Held—That the defendants are really to be regarded as volunteers in supplying the information which they profess to have at their disposal and their motive in carrying on the business is self-interest.

That having regard to the methods which will be naturally adopted in carrying on such a business it is not for the welfare of society that the protection which the law throws around communications made in legitimate self-defence or from a *bonafide* sense of duty, should be extended to communications made from motives of self-interest by persons who trade for profit in the characters of other people.

In cases which are near the line and in cases which may give rise to a difference of opinion the circumstances that information is volunteered is an important element for consideration.

Held in an action for libel brought against the defendants by a firm in respect of whom the Defendants had made communications to a subscriber that the same were not made on a privileged occasion. P. C.

Macintosh v. Dunn, 12 C. W. N. 1053.

Limitation Act sec. 10—*Trust for a specific purpose, meaning of the expression—Express trust—English Law—Palla money deposited with the bride's father—Misappropriation of the sum—Suit to recover the money Limitation.*—The plaintiffs were husband and wife. A sum of Rs. 366, being the amount of the female plaintiff's *palla* or dowry, was, on the occasion of her betrothal to the male plaintiff in 1871, made over by the male plaintiff's father to the keeping of the lady's father as a fund constituting her *palla* in accordance with the usual practice prevailing in the caste. This fund having been misappropriated either by the original trustee or after his death by his legal representatives, this suit was brought to recover the sum. The defendants contended that the suit was barred by limitation. *Held*, that section 10 of the Limitation Act applied to the case; and that it was, therefore, not barred. Section 10 of the Limitation Act requires, as conditions precedent to its applicability, first that the suit should be against a person in whom property has become vested in trust for a specific purpose or against his legal representatives or assigns, and, secondly, that the suit should be for the purpose of following such property in his or their hands. The phrase "trust for a specific purpose" in section 10 of the Act is merely a more expanded mode of expressing the same idea as that conveyed by the expression "express trust" in English law. It is used in the section in contradistinction to trusts arising by implication of law, trust resulting and trusts constructive. The meaning of the expression "following the property" discussed and explained.

Batchelor & Heaton J. J.

Bhurabhai v. Bai Ruzmani 32 Bom. 394.

—**s. 20**—*Part payment—Endorsement not in debtor's hand, but only signed by him—When debtor can write, whether such signature is sufficient to save limitation.*—Where a debtor can write, but an endorsement is written by another person and only signed by him, it is not an endorsement, which is, as far as possible, in his handwriting, and therefore it is not sufficient under the provisions of section 20 of the Limitation Act to create a new period of limitation.

Brette & Coxe J. J.

Santishwar Mahanta v. Lakhikanta Mahanta, 35 Calc. 813.

———**sec. 22—Added plaintiff—Pro forma defendant joined as Plaintiff**—Where a person who was at the institution of a suit made a *pro forma* defendant subsequently is joined as a plaintiff, sec. 22 of the Limitation Act does not apply. In such a case the added plaintiff is not a new plaintiff.

Stephen, & Holmwood J. J.

Nagendrabala Delya v. Tarapada Acharjee 8 C. L. J. 286.

———**Article 11, Civil Procedure Code, section 335—Purchasers at Court sale—Obstruction to delivery of possession—Obstructor manager of joint family consisting of minors—Partition between obstructor and minors—Allotment of the property to the share of minors—Withdrawal of the obstructor by default without notice to minors—Design on the part of the obstructor—Order awarding possession to purchasers—Suit by minors to recover possession—Limitation**—Certain purchasers of lands at a Court-sale applied to be put in possession of the property but the delivery of possession was obstructed by one V. who was the manager of a joint family consisting of himself and his two minor step-brothers. While the obstruction proceedings were pending a *farkhat* or settlement on partition had been arrived at between the obstructor and his two minor step-brothers and the lands had fallen to the share of the minors. V. thereupon designedly withdrew from the obstruction proceedings by allowing them to be dismissed for default, without giving notice of his abandonment to the minors and an order was passed awarding possession to the purchasers in the absence of any appearance by V. The order was passed on the 6th August 1908. The *farkhat* or settlement on partition, which for its validity required the sanction of the Court, had never received that sanction and it was subsequently set aside at the instance of the plaintiffs. In the year 1903 the plaintiffs, that is, the step-brothers of V. to whom the lands had been allotted, brought a suit to recover possession of the lands. Both the lower Courts held the suit to be barred under Article 11, of the Limitation Act.

Held, on second appeal by plaintiff 1, that the suit was not time-barred under Article 11, of the Limitation Act as the minors were not “efficiently represented.” *Padmakar v. Mahadev* 10 Bom. 21, followed. The withdrawal of V. by default from the obstruction proceedings was designed by him (as appeared from the circumstances) in order to deprive the minors of an opportunity of being heard. The minors had no opportunity of protecting their interest which V. had abandoned without notice to them or to any one on their behalf.

Batchelor J.

Shidapa v. Venkatji 32 Bom. 404.

———arts. 36, 39 and 49—*Fictitious landlord and tenant—Distrain—Removal of crop—Suit for damages—Trespass—conversion.* Where it was found that the defendant had set up a fictitious landlord and a fictitious tenant in respect of the plaintiff's holding, and having obtained a process for distraint from Court, caused the standing crops on the holding to be distrained and subsequently cut and removed them.

Held (Per Rampini C. J. & Geidt J.) that the plaintiff's suit for damages in respect of the above acts of the defendant fell within art. 36 of the second schedule of the Limitation Act. *Moresh v. Hari*, 9 C. W. N. 376; *Mungun v. Dulhin*, 2 C. W. N. 256, S. C., 25 Cal. 692 referred to.

Per Doss J. (contra) that so far as the defendant wrongfully entered on the land, the suit was governed by art. 39 and in regard to the removal of the crop after it was cut, the suit was governed by art. 49 of the second schedule of the Limitation Act. *Geidt J.*

Sripati v. Harikar, 12 C. W. N. 1090.

———**Article 179—Instalment decrees—Failure to pay instalment Waiver—Payment of interest—Limitation Act Article 179.** *Held*, (1) No distinction can be drawn between a case in which the decree provides that on non-payment of any instalment the whole amount "shall" become due and one which provides that the whole amount "may" become due. The provision being for the benefit of the creditor, the presumption is that he does not waive it, and the defendant may well consider the whole amount to be due from the date of default.

Furthermore where the decree-holder actually applies for execution of his decree for the whole amount, he thereby does an unequivocal act to the knowledge of the defendant, showing which of the two alternatives he adopts and his election is final.

An execution application filed more than 3 years from the date of such default or such election is time-barred.

(2) If the decree-holder relies on payment of interest as saving Limitation, he must satisfactorily prove that the payment was made before the prescribed time, and was specifically appropriated to interest. A proof of general payment is not sufficient. *Damodhar vs. Jankibai*, 5 Bom. L. R. p. 350 followed.

Jethanand Topandas v. Lalamal Sitalmal. 1 Sind. L. R. 252.

Madras City Municipal Act (3 of 1904) S. 176, sch. V—"Capital" Meaning of—Statutes—Interpretation—Principles. *Held*, that the word "capital" in schedule V of the Madras City Municipal Act, does not mean exclusively nominal capital.

Held also, that in the case of the Fund in question having a declared nominal capital of Rs. 29,99,976 divided into 357, 168 shares of Rs. 84 each, subscribed for by payment of Re. 1 per mensem over a period of 7 years (the payment not being demandable in advance) the word capital should be interpreted only as "paid-up capital."

The ordinary and popular meaning of the word "capital" is money actually contributed for employment in business.

The underlying principle of Schedule V seems to be that taxation, should be roughly proportionate to the professional incomes of individuals and the profits of companies.

The subject is not to be taxed unless the language of the statute clearly imposes it.

The Indian Companies Act cannot be resorted to in the interpretation of the Madras City Municipal Act, as the two Acts are not *in pari materia*. In construing an Act, in the absence of a definition of a word in the Act itself the presumption is that the word is used in the Act in its ordinary and popular meaning.

S. 176 of the Madras City Municipal Act hardly contemplates a reference in general and abstract terms. It only empowers the Magistrates to state a case on any appeal before them and refer the same for the decision of the High Court, i. e., to state all the matters necessary for the decision of the particular case before them on appeal and to refer the case so stated for decision.

Benson & Munro J. J.

The Mylapore Hindu Permanent Fund Ltd. v. The Corporation of Madras, 18 M. L. J. 849.

Madras District Municipalities Act, Ss. 85 and 88—Registration—Court—Obliteration of number on one axle and painting it on another—Illegal collection of toll Municipality, not liable. Removing the registration number from one axle and affixing it on another is not an offence within the meaning of Ss. 85 and 88 of the District Municipalities Act, unless it be that such affixing is contrary to any bye-law of the Municipality under S. 85. Where the number was so removed from one axle and affixed to another axle of a cart by the owner, the Municipality is not liable in respect of tolls illegally collected by the toll contractor, but is only liable in respect of any license fee collected by itself.

White C. J. & Boddam J.

C. R. Srinivasa v. The Mun. Council, 18 M. L. J. 377.

Malignous prosecution—Suit for—Information to police—Prosecution by police, instigated and conducted by private individual—Real

Prosecutor liable—Question of fact—Malice. A suit for damages for malicious prosecution may lie against a person who makes a false report which results in a prosecution or who instigates the police to send persons up for trial or who conducts the case against those persons when sent up for trial.

The question in all cases of this kind must be—who was the prosecutor? And the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion. The conduct of the complainant before and after making the charge must be taken into consideration. Nor is it enough to say that the prosecution was instituted and conducted by the police.

Whether or not in any case, the prosecution was instituted and conducted by the police is a question of fact.

The foundation of the action is malice and malice may be shown at any time in the course of the enquiry. If a complainant does not go beyond giving what he believes to be the correct information to the police, and the police without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. *Narsinga v. Mathaya*, 26 Mad. 362, considered.

Pandit Gaya v. Sardar Bhagat, 12 C. W. N. 1017.

Malikana—Claim for—The Land Registration Act (VII of 1876 B.C. S. 78 which is not a claim for rent. S. 78 of the Land Registration Act is no bar to claim for Malikana which is not a claim for rent.

Mookerjee & Casperes J. J.

Syed Shah Najamuddin Hyder v. Syed Zahid Hossein, 8 C.L.J. 300.

Mortgage—Suit for redemption—Old mortgage—Burden of proof—Secondary evidence of terms of a mortgage-deed—Admission. In a suit for redemption of a mortgage, of 1846 held, with reference to the provisions of S. 6 of Act I of 1862, that the burden is on the plaintiff to give at least *prima facie* proof that the mortgage is redeemable. *Rajah Rishen Dutt Ram v. Narendra Bahadur Singh*, referred to.

Held further, that secondary evidence of the terms of the mortgage deed, if admissible, must be of the kinds specified in S. 63 of the Evidence Act.

Held also, that no admission by the mortgagee can operate to make a mortgage redeemable which by law was irredeemable at the time when the admission was made.

Evans & Pigot J. C.

Kayath Scholarship Trust Allahabad v. Shanker Din, 11 O. C. 285.

———*Suit—Parties—Puisne mortgagee necessary party—Decree obtained without impleading him void—Civil Procedure Code, Ss. 32, 278, 280 and 283—Transfer of Property Act, S. 85.* *Held*, that in a suit brought by a prior mortgagee on the basis of mortgage for recovering the mortgage money by sale of the mortgaged property, all subsequent encumbrancers, if any, are necessary parties, and so the mortgaged property can neither be attached nor sold in a decree obtained by him against the mortgagor alone without impleading the puisne mortgagee in possession.

Held also, that though the Transfer of Property Act is not in force in the Punjab the principles laid down therein can be followed in the absence of any other rules of Law to the contrary. *Robertson & Kensington J. J.*

Hukam v. Karam, 3 Pun. W. R. 492.

Muhammadian Law—Gift—Usufruct—Ariat—*Held* upon application for review of judgment in the case of *Mumtaz-un-nissa v. Tufail Ahmad*, 28 All., 264; Weekly Notes, 1905, p. 269, that what was decided in that was that the transfer there in question was not an absolute gift, so that any limitation or condition limiting it would be void under the Muhammedan Law, but that, taking the transaction as a whole, it was a grant of the usufruct of the property to Mussammat Habib-un-nissa for her life. It was not intended to be laid down that the transfer being an *ariat* was invalid.

Bannerji & Richards J. J.

Khalil Ahmad. In the matter of the petition of—30 All. 309.

Municipality—Surat City Municipality—Rules framed in the year 1905, Rules 1 (2), 4 (a), (f) (3), (5), (7)—Water supply by the Municipality—Notice to cut off the water-supply—Waste—Domestic purposes—Legitimate household purposes—Use of water by bona fide occupiers of a house. The plaintiff, an owner and occupier of a house in Surat, brought a suit against the Surat City Municipality for an injunction restraining the Municipality from cutting off the water-supply which had been provided for him under certain rules in force in the year 1898.

The Municipality as defendants contended that under the rules which they had made in the year 1905, they were entitled to cut off the water-connection with the plaintiff's house because he allowed the water to run to waste, inasmuch as it was used by families of tenants who were not of the family of the plaintiff.

Held, that under the rules framed by the Surat City Municipality in the year 1905, so long as the plaintiff occupied a house not inhabited by more than three families (rule 7), he was entitled to the water-supply which he had enjoyed.

Held, further, that the application of the words "run to waste" in rule 4, clause (f) (3) depended upon the construction of the definition of "domestic purposes" in rule 1 (2). The definition of "domestic purposes" meant nothing more or less than legitimate household purposes. The user for legitimate household purposes by more than one family in the house was not waste within the meaning of the definition. *Scott C. J. & Knight J.*

Surat City Municipality v. Tyabji, 32 Bom. 460.

Negotiable Instrument—*Putting an end to.* A negotiable instrument can only be assigned by endorsement. That does not prevent any arrangement not to negotiate but to put an end to it. *Coxe & Does J. J.*

12 C. W. N. 1103.

Occupancy holding—*Non-transferable bequest of, if void or voidable*—*Void and voidable transaction*—*Nature of*—*Recognition by landlord of transfer.* When a transfer of a non-transferable occupancy holding takes place the transaction is in law voidable at the option of the landlord only. Hence the heir of an occupancy raiyat of such holding is bound by a bequest of the holding made by the latter in favour of a stranger. If a transaction is void, no rights in favour of either party can grow under it nor can it form the foundation of any estoppel. It is not necessary to have it set aside; its invalidity may be set up whenever it is sought to be enforced or ratified.

If a transaction is voidable it is valid and binding upon the parties and persons deriving title through them, whether by descent, purchaser otherwise until it is avoided. The transfer of an occupancy holding which is not transferable by local custom may be validated by the consent of the landlord.

When the landlord recognises the transfer as valid he recognises the transfer of the existing occupancy right as a valid transaction. *Does J.*

Hari Dass Bairage v. Undory Chandra Das, 8 C. L. J. 261 =
12 C. W. N. 1086.

Partition Act, section 4—*Transfer of Property Act, section 44*—*"Undivided family"*—*Section 4 of the partition Act applicable to Muhammadans.* *Held* that Muhammadans are not excluded from the benefit of section 4 of the Partition Act. *Kalka Pershad v. Banky Lall*, 9 Oudh Cases, 158, approved. *Hashmat Ali v. Mnhammad Umar*, 29 All. 308 overruled. *F. B.*

Sultan Begam v. Debi Prasad, 30 All. 324.

Partners—*Pro-note executed by some in favour of another partner*—

Maintainability of the suit by the latter. Generally one partner is not enforced to maintain a suit other than a suit for dissolution against the other members of the firm in respect of the partnership transaction on the ground that the plaintiff as a member of the firm would be a necessary defendant and that a man cannot maintain a suit against himself.

Held—That this rule is no bar to a suit by one of the members of a firm upon a pro-note given him by the other members of the firm in respect of an advance made by him to the firm. *Rustomji v. Sheth*, 25 Bom. 606, explained.

Wallis & Munro J. J.

Vallum Koudu v. Mallupeddi, 4 Mad. L. T. 195 = 18 Mad. L. J. 347.

———*Sleeping partner—who is—rights of*—The Law of partnership is no doubt, a branch of the law of agency, but the position of the partners *inter se* can not be altered because one partner chooses to take no part in the business, nor can he acquire greater rights on that account against his partners. Managing partners are principals as well as agents and can not be compelled to prove payments made by them in the same way as an agent. In law, a sleeping or dormant partner is a partner who is not known as such to third parties dealing with the firm. A partner who takes no part in the business may be called in popular phraseology a sleeping partner but this term should never be used in defining the relationship of partners *inter se*. It has nothing to do with the amount of work done by an individual, as a managing partner may conduct the whole business of a firm and will yet be a sleeping partner, if he is known only as a manager to persons dealing with the firm. The partner who takes no active part in the business of the firm does not occupy a more favourable position as regards his partners on that account, nor is he entitled to any protection as against them.

Macleod J.

Daji Abaji v. Govind Narayan 10 Bom. L. R. 811.

Practice—Declaratory decree—A person cannot sue for a declaration of his right to immoveable property, which may never come into existence; a mere contingent right, which may never ripen into an actual existence right, is not always sufficient to ground an action for such declaration.

Special Bench.

Samarendra Chandra Deb v. Birendra Kithore Deb, 35 Calc. 777.

———*Remand—Examination of witness on commission.* On remand by the High Court for the determination of certain issues the District Court sent down the case to the first Court in order that the evidence might be taken then. The evidence of the plaintiff was taken on com-

mission. Held that the parties were not prejudiced thereby.

Batchelor & Beaman J. J.

Khashaba v. Chandrabhagabai, 32 Bom. 441.

—————*Interlocutory Judgment—Judgment based upon an assumption or hypothesis subsequently ascertained to be erroneous—Re opening the portion of the case affected by the error.* The High Court on appeal delivered an interlocutory judgment remanding the case for a finding on a certain issue.

On the case coming again before a differently constituted Bench of the High Court for final disposal.

Held, that the remanding judgment was conclusive on all points therein specifically decided beyond possibility of revision, but that it was otherwise with regard to any part of the judgment which could be shown to be based on such mistake or error as it would have been the duty of that Bench to correct, if it had been brought to its notice when the judgment was delivered.

Per Batchelor J.—In so far as any part of the remand judgment is based on an assumption or hypothesis which is now ascertained to be erroneous, it is, we think, competent to us—or rather it is incumbent on us—to disregard it, and to re-open that part of the case affected by the error.

Jenkins C. J. & Bachelor J.

Balwant Ramchandra v. Secretary of State, 32 Bom. 432.

Pre-emption—Berar—Sale of interest of co-occupant. When the interest, or any part of the interest, of a co-occupant in a Survey number in Berar is sold by auction in pursuance of a mortgage decree or sale of the mortgaged property, no right of pre-emption arises.

Maidalu v. Trjabai, 4 Nag. L. R. 138.

—————*Plaintiff's title at the time of institution of the suit—Title acquired by purchaser subsequent to the cause of action.* *Held*, that the plaintiff in a pre-emption suit must be able to show a valid and subsisting title at the time when he brings his suit into Court.

Held further, that a purchaser may use a title acquired by him subsequently to the origin of the cause of action as a defence against a pre-emption suit instituted after his acquisition of the said title. *Pigott J.C.*

Tahuwar Khan v. Madho Ram, 11 O. C. 290.

Promissory note—Arrangement for cancellation. If the parties to a promissory note agree that on the promisor executing a bond for the amount due in favour of a third person, the promisee would cancel the note, this arrangement would be a perfectly valid contract, whether the third party paid any money to the promisee or not.

Coze & Doss J.

Sha Muldhon v. Srimutty, 12 C. W. N. 1103.

Privy Council.—*Practice of—Courts in India differing as to question of fact—Question as to a mortgage being a real or fictitious transaction—Circumstances to be taken into consideration in dealing with conflicting evidence.* On the question whether a mortgage was fictitious or a real transaction there was evidence on each side bearing directly on the character of the transaction but on neither side was the evidence wholly convincing. Persons whom one might have expected to be prominent witnesses were not called, and the evidence given by those who were called was open to much adverse criticism. The Court in India differed, the Subordinate Judge deciding that the mortgage was fictitious, and the High Court holding it to be a genuine transactions. *Held* by the Judicial Committee that in determining which story was to be accepted it was necessary for their Lordships to rely largely upon surrounding circumstances, the position of the parties and their relation to one another, the motives which could govern their actions; and their subsequent conduct: and so dealing with the case their Lordships upheld the decision of the High Court. The fact that if a genuine transaction it was advantageous to the mortgagor, and if fictitious it afforded him no immediate protection from creditors (which was motive alleged by the defendants for entering into the transaction) was a very material circumstance in the case.

P. C.

Dalip Singh v. Nawal Kunwar, 30 All. 258.

Railway Company.—*Negligence—Onus—Evidence Act, sec. 106.*—In a suit brought by the legal representative, of a deceased person, who was killed at an accident, while travelling in the train, the onus of proving that there was no negligence on the part of the Railway Company, lies upon them, on the principle of law enunciated in sec. 106 of the Indian Evidence Act.

Davies & Benson J. J.

The Madras Ry. Co. Batial 4 M. L. T. 251.

Registration Act.—s. 17, 21, 49, 89,—*Charge on immoveable property—Non-compliance with provisions of Registration Act.*—Where a power-of-attorney purporting to create a charge on immoveable property did not sufficiently describe the property, and was stamped and registered as a power-of-attorney, and entered in Book IV (the Miscellaneous Register):—*Held*, that the document was not registered in accordance with the provisions of the Registration Act. and, therefore could not, under section 49 of the Act, affect any immoveable property comprised therein.

Maclean O. J. Harrington & Fletcher J. J.

Indra Bibi v. Jain Sirdar Ahiri, 35 Calc. 845.

—s. 17—*Compromise petition—mortgage of immoveables—non-*

registration.—Upon a suit for recovery of money due on *bahikhata* accounts, a compromise was come to, and a petition filed, and in accordance with the petition a decree was made to the following effect, viz, that the defendants do pay to the plaintiffs a certain sum of money together with interest, in instalments, but in default of payment of two instalments the whole amount with interest, will be realizable at once. The decree further declared that the immoveable properties specified therein should be hypothecated for the realisation of the said money, and that the defendants should not be able to create an incumbrance on the same. A certain sum of money having been realized, the plaintiff brought a suit for the balance under the provisions of the Transfer of Property Act, and prayed for the sale of the properties specified in the schedule to the said decree. On an objection by the defendants that the compromise decree was void for want of registration and non-compliance with the provisions of section 59 of the Transfer of Property Act, and was of no effect in that having regard to s. 17, cl. (i) of the Indian Registration Act. the compromise decree need not be registered. *Held*, also, that as the decree under construction had little resemblance in form to a simple mortgage, and the hypothecation clause created a lien and prohibited further incumbrances, the parties only intended to create a charge, and not a mortgage, on the immoveable properties mentioned in the schedule to the decree, and therefore section 59 of the Transfer of Property Act had no application, and the absence of the formalities required by that section would not bar the relief, which might be obtained by section 100 of the Act.

Mittra & Casperses J. J.

Gobinda Chandra Pal v. Dwarka Nath Pal, 35 Calc. 837.

Revision—Practice—interference though there be other remedy.—The High Court can interfere under section 622. Civil Procedure Code, even though the aggrieved party has other remedy available.

Brett & Mookerjee J. J.

Omatul Medhi v. Kulsam 8 Cal. L. J. 245.

Riparian owner—Irrigation—Prescription—Custom—Vicinity—Limitation Act, sec. 26, Art. 47. A riparian owner claiming a right to irrigate his lands from the river flowing past his land by putting up dams therein must not interfere with the rights of the lower riparian owners. Any such interference would be unreasonable and inconsistent with the rights of others, unless allowed in pursuance of some arrangements arrived at between the parties interested, or by the successful acquisition of a prescriptive right. An upper riparian owner can acquire an easement to irrigate his land apart from the mode of acquisition mentioned in S. 26 of the Limitation Act: But if he relied on custom, he must prove that it was ancient,

continuous, peaceable, reasonable, certain, compulsory and consistent with other customs regarding the right to irrigate from the river. Art. 47 of the Limitation Act has no application to a suit for a declaration of the plaintiff's right to put up dams in a river to irrigate his lands, if not being one to recover possession of property. *Caspersz & Sharfuddin J. J.*

Eshan Chaadra Samanta v. Nil Moni Singh, 35 Cal. 851.

Second appeal.—*Finding in favour of existence of custom based upon insufficient evidence*—*Second appeal—Practice.* Held that where a question arises as to the existence or non existence of a particular custom, and the lower appellate Court has acted upon illegal evidence or on evidence legally insufficient to establish an alleged custom, the question is one of law, and the High Court is entitled in second appeal to consider whether the finding is based upon sufficient evidence. *Hashim Ali v. Abdul Rahman*, approved. *F. B.*

Ram Bilas v. Ram Bahadur, 30 All. 311.

Solicitors.—*Taxation of bills—Practice.* Under the practice obtaining in the original side of the High Court, taxation of bills of solicitors is deemed to be optional with the client and bills of costs are not infrequently adjusted without taxation.

The case of *Moushur Doss v. Rowa Nath*, 3 Cal. 473, (1818) was decided on the special circumstances of that case and does not lay down any general rule of law. *Coxe & Doss J. J.*

Shahmuldhone v. Srimutty, 12 C. W. N. 1102.

Stamp Act, secs. 40, 44, 48 and 55—*Stamp—Improperly stamped document tendered in evidence*—*Stamp duty from whom recoverable.* If a plaintiff produces in Court in support of his claim an unstamped or improperly stamped document, he primarily is the person from whom the requisite stamp duty and penalty may be recovered under section 40 of the Indian Stamp Act, *Knox & Aikman J. J.*

Secretary of Law for India in Council v. Basharatullah, 30 All. 271.

Succession Certificate Act, section 4—*"Debt"*—*Deferred dower.* Held that the dower of a Muhammadan wife, whether prompt or deferred, is a "debt" within the meaning of section 2 of the Succession Certificate Act, and that in a suit for its recovery brought by the heirs of the deceased wife against the husband no decree can be passed in favour of the plaintiff in the absence of the certificate required by the Act. *Musammat Bissessari Kumari*, 2 C. W. N., 591 dissented from.

Stanley C. J. & Burkitt J.

Abdul Karim Khan v. Makbul-un-nissa Begam, 30 All. 315,

Suit—Maintainability of—Fraud—Decree on compromise. Where a decree is passed on adjudication no separate suit lies to set aside the decree except on the ground of fraud but where it is passed simply upon a compromise, a suit lies upon grounds other than that of fraud.

When the minors were defendants represented by their mother and guardian in the original suit as also in the review petition and the application for review was discharged with the express object that the applicant's proper remedy was by way of suit and not by way of review, a suit by the minors through a next friend, their mother and former guardian *ad litem* being impleaded as a defendant, lies to set aside the decree on grounds other than that of fraud.

Mookerjee & Holmwood J.

Biku Halwai v. Mohesh Halwai, 8 Cal. L. J. 260,

Transfer of Property Act, sec. 53—Mortgage—Assignment of invalid mortgage—Assignment of invalid mortgage—Right of assignee as against mortgagor and subsequent mortgagee for consideration—Madim—Qui prior est tempore potior est jure. On the twenty-third of October 1897 one M. A., executed a mortgage of certain property in favour of H. A., which was registered on the 29th of October 1897. This mortgage was found to be fictitious and without consideration and to have been made solely for the purpose of defeating the creditors of the mortgagor. On the 15th of August 1898 the mortgagee transferred his rights under this mortgage to his wife B, in part satisfaction of her dower debt. It was found that this was a *bona fide* transaction that B. obtained the transfer of the mortgage without any knowledge of its fraudulent character and was a transferee in good faith and for consideration. On the 29th of October 1897 the same property was again mortgaged to one B. P. who accepted the mortgage in ignorance of the existence of the mortgage of the 23rd October 1897. This mortgage was registered on the 22nd of March 1898, B. P. afterwards brought a suit for sale on the mortgage impleading B, as a defendant, as well as the mortgagor and the prior mortgagees.

Held that B, was entitled to no relief as against B. P., though as against the mortgagor she was entitled to be paid the amount of the consideration named in the deed of transfer in her favour out of the surplus sale proceeds if any of the mortgaged property.

Stanley C. J. & Burkitt J.

Basti Begam v. Banarsi Prasad, 30 All. 297.

Sec. 90—Decree ex-parte—Mortgage—Personal decree—Inherent Power of Court to set aside ex-parte decree—Succession Certificate Act, sec. 4. A decree under s. 80 of the Transfer of Property Act having been made *ex parte*. *Held*, that there is inherent jurisdiction in the Court to set it aside. *Bibi Tasliman v. Harihar Mahto*, 32 Cal. 293, followed.

Held further that if the decree be a personal decree for a large sum, it ought not to have been made *ex-parte*. A decree can only be passed under sec. 90 against a defendant, from whom the balance is legally recoverable. Having regard to s. 4 of the Succession Certificate Act, the Court cannot pass any decree under s. 90 in favour of the representative of the mortgagee, if no certificate has been granted to him, and a grant of the certificate subsequent to the passing of the decree under s. 90 is not sufficient to get rid of the difficulty in his path.

Maclean C. J. & Coxe. J.

Abdul Sattar v. Satya Bhushan Das, 35 Cal. 767.

———**s. 111—Forfeiture—Ejectment—Co-lessors—Suit for ejectment by one set of co-lessors.**—In a suit for ejectment by one set of co-lessors on the ground that the principal defendants have forfeited their rights as tenants, under s. 111 of the Transfer of Property Act, having denied the title of the plaintiffs in a previous rent suit:—*Held*, that though all the present plaintiffs were not parties to the previous rent suit, inasmuch as the said defendants not only denied the existence of the relation of landlord and tenant between them and the then plaintiffs, but set up a third party as their landlord in respect of the disputed land, they incurred a liability to have their tenancy forfeited. *Held* further, that though in England any joint tenant may put an end to his demise as far as it operates on his own share, whether his companions join him in putting an end to the whole lease or not, yet according to the decisions, the relation created by contract with several joint landlords continues, until there exists a new and complete volition to change it. Where therefore the relation of joint landlords continues, the tenancy of the lessees cannot be put an end to, except by all the lessors acting together. *Held* also, that the rule is different in the case of trespassers and in the case of tenants, when *khas* possession is not sought for.

Rampini & Sharfudin J. J.

Gopal v. Dhakeswar Prasad 35 Cal. 807.

———**S. 123—Registration—Gift of immoveable property—Acceptance of the gift—Registration of the deed subsequent to acceptance.**—A gift of immoveable property duly made and accepted is not invalid merely because the registration of the deed of gift took place after the death of the donor. *Nand Kishore Lal v. Suraj Prasad* 20 All. 392, followed. On registration the deed of gift would operate as from the date of execution.

Batchelor & Beaman J. J.

Khashaba v. Chandrabhagabai 32 Bom. 441.

Trespass—Remedy—injunction.—Where there had been undoubted disturbance of Plaintiff's possession some rents having been collected and appropriated by the Defendant and the Plaintiffs' establishment directed to

obey the order of the Defendant but nomination of names having been effected, the rents had been collected and money orders cashed in the name of the Plaintiff and her establishment taken over by the Defendant in the Plaintiff's absence and without her consent to which the Plaintiff at once protested and she also made certain collections on her own behalf.

Held that the possession of the estate had really remained in the Plaintiff and there had been a continuing trespass, for which the Plaintiff was entitled to have an injunction and it was not necessary for her to institute an action in ejectment against the Defendant.

It is not essential that the Defendants should all actually commit trespass to be liable to the Plaintiff; a trespass committed by a subordinate officer under orders from the superior officers is in substance the act of them all and both the subordinate as well as the superior officers are liable to the Plaintiff as trespassers.

Woodroffe J.

Ganada Sandari Chaudhurani v. Nilini Ranjan Raha 12 C. W. N. 1066.

Trust—Discretion to the Trustee—Right of beneficiary to sue for an account—The Will of Seth Shewaram *inter alia* provided as follows—"I bequeath Rs. 5,000 for the marriage expenses of my daughter Sitabai's to be paid when that event happens." At the time of Sitabai's marriage, the Trustees appointed under the will, handed over the sum of Rs. 5,000 to one Ghandoomal, a paternal uncle of Sitabai, for spending the said amount. Sitabai filed a suit against Ghandoomal for an account and the recovery of the unspent portion of the money, *held*, Sitabai could maintain the suit. The Will gave no discretion to, the trustees to spend as much amount as they thought fit out of the Rs. 5,000 but directed them to pay the whole amount and thereby created a Trust in favour of Sitabai, the subject matter of the trust being the fund itself and not the power to spend.

Distinction between condition, fiduciary power and trust explained.

Ghandoomal Ramrakhiomal v. Sitabai 1 Sind, L. R. 263.

Will, Construction of—Technical words to have their legal effect unless intention to contrary apparent on the face of will—The words 'in trust' do not always create trust—**Merger**—Where trust in favour of party in whom legal estate vested, equitable estate merges in the legal estate—General disposition of whole estate will not be cut down unless intention so to cut down is clear—Will must be construed as a whole—The words 'as she may require' mean 'as may be necessary.' In construing wills, the test to be applied is what did the testator mean, having regard to the words used. Technical words or words of known legal import must have their

legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. The words 'in trust' do not invariably create a trust. The principle that a trustee cannot take beneficially has no application where the trust is in terms in favour of the party in whom the legal estate is vested; where both the legal and equitable estate are given to the same person, the two estates merge and the person to whom they are given, takes the legal estate. Where a testator devises *all* his property, the generality of the disposition will not be cut down unless the intention so to cut down is clear. The will must be construed as a whole and in a manner consistent with the intentions of the testator and its general tenor. The words 'as to her may seem best' mean 'as she may think fit.' Where a person is authorised to draw money for certain purposes 'as he may require,' he can draw only such amounts 'as may be necessary' for the purpose and not any amount 'as he may think fit.' A will contained the following *inter alia* clauses:—(I) will and bequeath to my dear wife Annie in trust and for her maintenance and support during her life all the money, property, goods and chattels of which I may die possessed whatsoever situated and I appoint my dear wife Annie sole administratrix of this my last will and testament." (X) "I further will that my dear wife Annie as sole executrix of this my last will and testament shall draw from current deposit accounts whether here or in Great Britain such sum or sums of money as she may require for her maintenance and for the working and maintenance of my property, and that she shall receive and dispose of all proceeds, rents and profits from the said property as to her may seem best in the interest of the property and I empower her to sell all or any part of the property at any time when it may appear to her that a favourable opportunity occurs." On the question whether the widow of the testator took an absolute life estate or whether the words 'intrust,' in clause (I) read with the words 'she shall receive and disposal of in the interest of the property' in clause (X) constituted her a trustee in respect of such portion of the income as was not required by her for her maintenance and support:—*Held* (I) That the words 'in trust' in clause (1) were not intended to create any trust but only to indicate the nature of her estate and that she should enjoy only the income for her life and should not deal with the corpus except as authorised by the will. (2) That clause (X) did not create any trust, and that the words 'she shall receive and dispose of the interests of property' were simply enabling words, which authorised her to apply, as she thought fit, the income of the property upon the property. The testator intended that she should have an unfettered discretion in the maintenance and development of the property, without being questioned

by any one interested in the reversion. (3) That life estate was given to the widow by the words 'during her life' and such estate was not cut down by the words 'for her maintenance and support' which were simple words of description or motive, and that if a trust was intended it was for her benefit only, in which case the legal and equitable estate merged and she took the legal estate. (4) the words 'as she may require' in clause (X) did not authorise the widow to draw any amount 'as she thought fit' but only such amount 'as should be necessary for the purposes stated.' (5) That there was nothing in clause (X) which showed a clear intention on the part of the testator to cut down the estate given by clause (I) and the widow accordingly took a life estate.

White C. J. & Miller J.

Mary Harriett Annie Wilson v. George Oakes 31 Mad., 283.

—Construction of will—Bequest to daughters "and their respective sons"—Whether absolute estate or estate for life—Principles of construction of Hindu wills—Succession Act Sec. 82, 111. The will of a Hindu directed his executors in case of failure of his sons, natural or adopted, and after the death of his wife "to make over and divide the whole of my estate both real and personal unto and between my daughters in equal shares to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons, share and share alike." The testator left no sons and of two sons adopted by his widow after his death the former died and the adoption of the latter was held by the Privy Council to be illegal. In a suit brought after the death of the widow by one of the two daughters of the testator for construction of the will and a declaration of the rights of the parties, to which suit the other daughter and her sons and the adopted son of the plaintiff were made defendants. *Held* (reversing the decisions of the Courts in India) that according to the true construction of the will the intention of the testator was to create in favour of his daughters an estate for life with a remainder over to their sons, and that in the events that have happened the daughters were entitled to the testator's estate in equal shares for life with benefit of survivorship between themselves. The language of the will clearly showed that the testator's intention was to exclude his daughter's daughters from the succession, to which they would have been entitled under ordinary Hindu law, had their mother's estate been an absolute one. The principles as to construing the will of a Hindu laid down in *Malomed Shumsool Hooda v. Shewukram*, L. R. 2 I. A. 7, 14; 14 B. L. R. 226, 232, 233, followed.

P. C.

Radha Prasad Mullick v. Ramesh Mani Dassee, 35 Calc. 896.

THE LAWYER.

1st DECEMBER 1908.

Part I

Administration—Sureties—Administration bond—Letters of administration—Fraud—Administrator converting assets to his own use—Transfer of bond to administrator General—Succession Act S. 242—The appellant was one of two sureties of an administration bond given to the High Court at Calcutta, on the strength of which that Court on 15th August 1902 granted letters of administration to the estate of a person, who it was alleged in the petition had died in England intestate. The Administrator, a member of a well-known firm of Solicitors in Calcutta, who represented himself to be the attorney of a fictitious person called the next-of-kin of the deceased, got possession of the assets in India, which consisted of bank shares and converted them to his own use. It was subsequently found that he had obtained the letters of administration by fraudulent misrepresentation to the Court, of which fraud however the sureties were not cognizant. He absconded, but was apprehended, tried, and convicted. The grant of administration in his favour was cancelled and in May 1904, letters of administration, with a will annexed, were granted to the respondent, the Administrator-General of Bengal, to whom the administration bond of 15th August 1902 was transferred, and who brought a suit against the defaulting administrator and the sureties on the bond. The former did not appear. The first Court made a decree against the defendants for the amount of the proceeds of sale of the bank shares, which was upheld by a majority of the Court of Appeal. *Held*, affirming the decision of the Courts in India, that the sureties were liable. The bond did not become void when the letters of administration were cancelled and, while they remained unrevoked, the grantee was to all intents and purposes administrator of the estate in India of the deceased, and for his acts and defaults as administrator the sureties were and remained responsible.

P. C.

Debendra Nath Dutt v. Administrator-General of Bengal, 35 Calc. 955.

Adverse possession—Co-owners.—Exclusive possession by a co-owner of property which originally had been admittedly joint does not *per se* amount of adverse possession as against the other co-sharer or co-shares, and this is more particularly the case where the co-sharers are closely related to each other.

Stanley C. J. & K. Husain J.

Parvati v. Ram Prasad, A. W. N., 1908, 239.

Agra Tenancy Act, ss. 95, 167—United Provinces Land Revenue Act, s. 40—Civil and Revenue Courts—Jurisdiction.—On the death of an occupancy tenant, one D. L., alleging that he was the adopted son of the late tenant and joint in cultivation with him, sought to have his name recorded as occupancy tenant of the vacant holding. The Revenue Court, however, finding that D. L. was not the adopted son of the late tenant, recorded him as a tenant at will merely. D. L. then filed a suit in the Civil Court asking for a declaration that he was the adopted son of the late tenant and joint in cultivation and was therefore entitled to succeed to the occupancy holding.

Held that the suit brought by D. L. was in effect one falling within section 95, clause (b), of the Agra Tenancy Act, 1901, and was maintainable in a Civil Court.

Knox & Richards J. J.

Dori Lal v. Sardar Singh, A. W. N., 1908, 240.

Arbitration Act (IX of 1899)—Pendency of suit—Proceeding with reference—Award before suit disposed of—Effect. *Held*,—(1) A reference to arbitration under the Indian Arbitration Act, does not exclude the right of the parties to have recourse, to the ordinary tribunals.

(2) If any party to the reference, files a suit in respect of the subject matter of the reference to arbitration, the other party may apply for a stay of proceedings under section 19 of the Act.

(3) Failing such application, or in the event of such application being refused, the parties have no alternative but to submit to the jurisdiction of the Court.

(4) An award procured by one of parties during the pendency of a suit could have no operation inconsistent with the judgment and decree of the Court given in the suit, and the result of the suit being unknown at the time of the passing of the award, the award falls short of complete validity and is, therefore, ineffective.

(5) Proceeding with a reference after notice of the filing of a suit is improper.

Messrs. Louis Dreyfus & Co. v. Seth Shivakram, 1 Sind L. R. 256.

Attorney—Attorneys, final examination for admission of—Rules and Orders of the High Court, Rules 116, 117, 118 and 132—Board of Examiners—Jurisdiction—Certificate—Solicitors Act, 1877 (40 and 41 Vict. ch. 25) s. 9—Special Bench.—An application by a candidate against the refusal of the Board of Examiners for the Attorneyship Examination to grant him a certificate of his having passed a Final Examination, should be made to a Special Bench constituted by the Chief Justice. The application refused on

the merits of the case, *Per Woodroffe J.*: By rule 116 of the Rules and Orders of this Court, discretion has been delegated to the Board of Examiners without any express reservation as made by s. 9 of the English Solicitors Act of 1877. The Court will not interfere with the exercise by the Examiners of the discretion confided in them, unless the Examiners refuse to exercise that discretion, or do not exercise that discretion, or do not exercise that discretion honestly and conscientiously.

Special Bench.

In the matter of Purno Chunder Dutt. 35 Cal. 915.

Bombay Civil Courts Act—(Act XIV of 1869, amended by Bombay act 1 of 1900. S. 2) sec. 16—*Probate and administration act, secs. 86, 51, 52. District Judge—Assistant Judge deciding applications where in the subject matter does not exceed Rs 5000 in value—appeal to District Court—No direct appeal to High Court—Power of local Legislature to amend an act passed by supreme Legislative Council—India Council's act (55 and 56 Vic. O. 14) s. 5.*—The Probate and Administration Act 1881, being a law made by an authority in India, is subject to the powers of repeal or amendment granted to the local legislature by s. 5 of the India Council's Act, 1892 (55 and 56 Vic. s. 14).

Hence the provision of the Bombay Civil Courts Act (Act XIV of 1869) s. 16 by which a probate matter can be tried in the first instance by the Assistant Judge and by which the appeal in cases where the amount of the subject matter does not exceed Rs. 5000 will lie to the District Court, is one which the local legislature was competent to make.

(Scott C. J. & Heaton J.)

Laxmi v. Aba 10 Bom. L. R. 924.

Civil P. Code.—*Misjoinder of parties—Multifariousness—Suit by heir to recover property from co-heir and transferees from him—Property situate in different districts—Compromise of part of claim—Jurisdiction.* The plaintiff sued as heiress of her father to recover from her brother and from certain transferees from him her share in the property of her deceased father. The suit was brought in the Court of the Subordinate Judge of Bareilly. Part of the property claimed was situated in the Bareilly district and part in the district of Bara Banki in Oudh. During the course of the suit a compromise was arrived at regarding the Bareilly property and the suit proceeded with reference to the property in Oudh alone. *Held* (1) that the plaintiff had properly impleaded her brother and the transferees from him as co-defendants in one suit, and (2) that, there being no fraud or improper motive alleged with reference either to the compromise or to the filing of the suit in

the court at Bareilly, that court was not by reason of the compromise divested of jurisdiction to hear and decide the suit in respect of the property situate in Oudh. *Ram Raji v. Dhup Narain* (Weekly Notes, 1885, p. 125) over-ruled. *Ganeshi Lal v. Khairati Singh* 16 All., 279 distinguished. *Khatija v. Ismail* 12 Mad., 330 followed.

Kubra Jan v. Ram Bali, A. W. N., 1908, 235.

————S. 13—*Res judicata—Mortgage—Redemption* Following the principle of *store decisis* held by the Full Bench, that a mortgagor, who has brought a suit for redemption and obtained a decree therefore but has not availed himself to enforce that decree is not debarred, by reason of such decree, from maintaining a second suit for the same purpose.

Dhanpat Mal v. Jhaggar Singh, 3 P. W. R. 475.

————S. 34—*Non-joinder of parties—Objection not taken at the earliest opportunity—Limitation.* An objection as to the non-joinder of parties alleged to be necessary ought to be raised by the defendant at the earliest opportunity; where this is not done and the parties omitted are in consequence not added until after the expiry of the period of limitation for a suit against them, the defendant will not be permitted to take advantage of the bar of limitation. *Pateshri Pratap Narain Singh v. Rudra Pratap Narain Singh*, 26 All. 528 and *Guruwayya Gouda v. Dattatraya Anant* 28 Bom. 11 followed. *Samrathi Singh v. Kishan Prasad*, 29 All. 311 distinguished. *Aikman & Griffen J. J.*

Hazari Mal v. Bhawani Ram, A. W. N., 1908, 246.

————S. 108—*Written statement filed—Party not appearing on the adjourned date of hearing—Whether decree is ex parte* An application under S. 108 of the C. P. Code lies where for sufficient reason the party fails to appear on the adjourned date of hearing, even where a written statement has been already filed. *Sankaran Nair & Abdur Rahim J. J.*

Muniayya v. Babuyan, 4 M. L. T. 216.

————Ss. 244, 234—*Questions arising in execution—Legal representatives of debtor—Decree-holder—Sons of a deceased Hindu debtor can raise questions of illegality or immorality of their father's debt, in execution proceedings—Separate suit, not permissible—Limitation Act, art 179—Appeal by some of the defendants—Limitation for dakhast against defendants who have not appealed* There is no substantial distinction in regard to questions arising in execution, between the position of legal representatives added as parties to the suit before decree and legal representatives brought in after decree under S. 234 of the Civil Pro. Code. All questions between them and the decreeholder relating to execution must alike be

disposed of under S. 244 of the Code. Where the sons of a deceased Hindu debtor are added as legal representatives in the course of a suit and before the decree is pronounced, it is open to them to dispute in execution proceedings the liability of the ancestral propertier for the debt of their father on the ground that the debt was tainted with immorality or illegality. They cannot insist on the decreeholder resorting to a fresh suit to enforce their pious obligation as Hindu sons to satisfy the debt out of the ancestral properties, because the question having arisen in execution proceedings between the decree-holder and themselves as parties to the suit, a separate suit is rendered inadmissible by the provisions of S. 244 of the Civil Pro. Code.

Where only some of several persons affected by a decree have appealed against it, the date of the appellate decree forms the basis from which the period of limitation under art. 179 of the Limitation Act, should be computed, even in the case of those who have not appealed against the original decree.

Scott C. J. & Heaton J.

Shivram v. Sakharam, 10 Bom. L. R., 939.

———S. 257A—*Agreement out of Court, to pay rent decree by instalments on hypothecation of property, if illegal—Suit to enforce such agreement, if maintainable.* A suit lies to enforce an agreement embodied in an instalment-bond executed, without the sanction of the Court, in favour of a decree-holder, hypothecating certain property for payment of a decretal amount. *Held* further, that the provision as to giving time to execute the decree is not illegal, though it may be incapable of enforcement, as the agreement was not made with the sanction of the Court.

Maclean C. J. & Doss J.

Belchambers v. Sarat Chandra Ghosh, 35 Cal. 870.

———S. 257A—*Mortgage in satisfaction of a judgment-debt.* *Held* that the mortgage of immovable property in satisfaction of a judgment debt is not void under S. 257A, Civil Pro. Code.

Rattigan & Lalchand J. J.

Tahori Mal v. Ganga Ram, 3 P. W. R. 534.

———S. 283—*Suit under—Official Assignee of insolvent judgment debtor not a necessary party to such suit—Decree in such suit cannot declare property liable to be attached but only that it is the property of the judgment debtor.* S. 283 of the Code of Civil Procedure gives a statutory right of suit to the unsuccessful party in claim proceedings; when the property of the insolvent judgment-debtor which was attached in execution had vested in the Official Assignee during the pendency of claim proceedings, the latter is not a necessary party to such suit. The decree in such suit should, where property had so vested, only declare the property attached to

belong to the judgment-debtor and ought not to declare it liable to attachment.

Wallis & Munro J. J.

Annapurani Ammal v. Subramanian Chettiar, 81 Mad. 347.

———**Ss. 295, 274**—*Property sold not attached*. Where a decree-holder simply applies to share rateably in the proceeds of sale under S. 295 Civil Procedure Code, but does not yet the property actually attached in execution of his decree he is not protected by S. 274 of the said Code notwithstanding his praying that the said property might be attached also in respect of his application for execution. *Rattigan & Lalchand J. J.*

Zahori Mal v. Ganga Ram, 3 P. W. R. 534.

———**Sections 310A, 244, and 588**—*Question relating to the execution, discharge or satisfaction of a decree—Appeal—Auction purchaser representative of judgment-debtor, not of decree-holder*. A purchaser at an auction sale in execution of a decree is the representative of the judgment-debtor, not of the decree-holder. *Manickka Odayan v. Rajugopala Pillai*, 30 Mad. 507, dissented from.

When therefore a judgment-debtor's application under section 310A of the Code of Civil Procedure had been allowed, it was held that no appeal by the auction purchaser would lie, inasmuch as no appeal was given by sec. 588, nor did the case fall within the purview of section 244 of the Code. *Bashir-ud-din v. Jhori Singh*, 19 All. 140, followed. *Intiaz Begam v. Dhuman Begam*, 29 All., 275, dissented from.

Aikman & Griffin J. J.

Anandi Kunwari v. Ajudhia Nath, 30 All. 379.

———**Sec. 313—Jurisdiction—Leave to withdraw suit with liberty to bring fresh suit—Letters Patent, 1885, cl. 12—Limitation—Limitation Act, s. 14**. Where a suit was originally instituted in the High Court, with leave under cl. 12 of the Charter obtained from the Registrar, and subsequently the plaint was returned to the plaintiffs, leave being given to them by the Court to withdraw the suit and to file a fresh suit on the same cause of action, and the plaint was presented again. Held, that the order giving leave to withdraw the suit was *ultra vires* and could only be regarded as one directing the plaint to be returned to the plaintiff. *Watson v. The Collector of Rajshakye*, 13 Moo. I. A. 160 followed. Section 373 of the Code of Civil Procedure does not apply except to cases where the suit is properly proceeding in the Court, in which the leave was granted. Held further, that the suit was covered by section 14 of the Limitation Act, and not barred.

Fletcher J.

Ramdeo Dass v. Gonesh Narain, 35 Cal. 924,

———**Sec. 318—Article 178—Execution of decree—Limitation—Terminus a quo.** Although the grant of a certificate is a necessary preliminary to an application under section 318 of the Code of Civil Procedure, such an application will be barred under article 178 of the second schedule of the Limitation Act, if not made within three years of the date of the certificate, that is to say, the date of the confirmation of sale. *Basapa v. Marya*, 3 Bom., 433 and *Kashinath Trimbak Joshi v. Duming Zuran*, 17 Bom. 228, dissented from. *Petition of Kishen Singh*, Weekly Notes, 1883, p. 262, referred to. *Aikman & Griffin J. J.*

Ranjit Singh v. Baldeo Singh, 30 All. 390.

———**Secs. 367, 588 (18)—Dispute as to who is the legal representative of a deceased appellant—Appeal.** Held on a construction of section 367 of the Code of Civil Procedure that a dispute as to who is the legal representative of a deceased appellant is not confined to the case of rival claimants to represent the deceased. *Sabbayya v. Saminadayyar*, 18 Mad. 496, followed. *Aikman & Griffin J. J.*

Hanwant v. Ram Gopal Singh, 30 All. 348.

———**Secs. 407 & 409—Suit *informa pauperis*—Evidence taken and question of limitation considered—Dismissal of suit—Jurisdiction.** Held that a Court has jurisdiction to decide the question of limitation under secs. 407 & 409 and take evidence for the purpose. *Vijendra v. Sulluudra*, 19 Mad. 197, and *Komrak v. Sundar*, 20 All. 290, followed. *Abdur Rahim J.*

E. N. Venkoba v. Thunia, 4 M. L. T. 302.

———**Sec. 508.—Receiver appointed by the High Court—Direction by the subordinate Judge to furnish accounts—Jurisdiction.** Where a receiver is appointed by the High Court, pending an appeal, no other Court has power to make an order or give any directions as supplementary to those given by the High Court, or without authority given by the High Court. *Miller & Pinhey J. J.*

Janki v. Narayanasami, 4 M. L. T. 268.

———**Sec. 503.—Receiver—Appointment of receiver to realise amounts of decrees.** Where a decree-holder had in execution of his decree attached two decrees held by the judgment-debtor against third parties, it was held that section 503 of the Code of Civil Procedure gave power to the Court to appoint a receiver to realise the amounts of the attached decrees where it appeared that by so doing the interests of both decree-holder and judgment-debtor would be better protracted. *Aikman & K. Husain J. J.*

Partab Singh v. The Delhi and London Bank, 30 All. 393.

—————**Secs. 503, 505, 508—Receiver—Appointment of—Recommendation by subordinate Judge to District Judge—Refusal by the latter to appoint—Appeal.** A Subordinate Judge recommended to the District Judge the appointment of a receiver under the provisions of sec. 505 of the Civil Procedure Code, the latter refused to make any appointment. On appeal to the High Court:—

Held that no appeal lay against the order, which was passed under sec. 505, and not under sec. 503 of the Civil Procedure Code and respecting which no appeal was provided for by sec. 588 of the Code.

Basil Scott C. J. & Batchelor J.

Bai Mani v. Khemchand Gokaldas, 10 Bom. L. R. 1037.

—————**Secs. 520 & 522—Award—Remitted by Court for revision—Decree in accordance with revised award—Whether appealable.** Where a Court remitted an award to arbitrators under sec. 520, Civil Procedure Code and the arbitrators submitted a revised award and a decree was made in accordance with the revised award, *held* that no appeal will lie from such decree on the ground that the order of remittal under sec. 520 was wrong and that the original award ought to have been accepted and acted on.

Benson & Wallis J. J.

Subbiah Iyer v. Subramania Iyer, 4 M. L. T. 328.

—————**S. 521—Order setting aside award under S. 521 can be questioned on appeal against the final decree.** Where a Court sets aside an award of arbitrators on application under S. 521, Civil Procedure Code, and decides on the merits, the Court of appeal can, on appeal from the final decree, inquire into the propriety or otherwise of the order setting aside the award. *Ganga Persad v. Kura*, 28 All. 408, not followed.

Boddam & Sankaran Nair J. J.

Achuthayya v. Thimmayya, 31 Mad. 345.

—————**Ss. 521, 521—Arbitration—Award—Award set aside upon ground not contemplated by S. 521—Appeal.** In a suit pending in the Court of a Munsif the matter in dispute between the original parties was referred to arbitration. To this arbitration a third person who had been brought upon the record as a defendant under S. 32 of the Code of Civil Procedure was not a party. An award was made dismissing the plaintiff's claim, but on an objection being preferred to the effect that all the parties to the suit were not parties to the arbitration, the Munsif set aside the award, proceeded with the suit, and on the merits granted the plaintiff a decree. An appeal against this decree by the defendant was dismissed. Both Courts found that the defendant who had been added under S. 32 had no

interest in the subject matter of the suit. The plaintiff appealed, on the ground, *inter alia*, that "the courts below had no jurisdiction to set aside the award so far as the parties to this appeal are concerned." *Held*, that an appeal lay.

Knaw & Griffin J. J.

Ramjiawan v. Nawal Singh, A. W. N. 1908, 242.

———**Sec. 508—Hundi—Defendant agriculturist—Suit under Chapter XXIX, Civil Procedure Code—Applicability of.** Where the plaintiff instituted a suit under Chapter XXXIX, Civil Procedure Code, to recover a sum not exceeding Rs. 1000 on a hundi, and it was found that the defendant was an agriculturist. *Held*, that the plaint had been rightly returned for presentation to the Small Causes Court. The defendant being entitled to the procedure and benefits of the Deccan Agriculturists Relief Act, provisions of Chapter XXXIX were inapplicable to him.

Thaoomal Manghanmal v. Gul Mahomed Johurak, 1 Sind. L. R., 243.

———**S. 545—Transfer of Property Act ss. 58, 59,—Security bond given under s. 545, Civil Procedure Code, mortgaging immovable property of above Rs. 100 in value requires registration under ss. 58, 59, of the Transfer of Property Act—Registration Act s 17, exception (i), does not apply to the case.** A security bond given to the Court under section 545 of the Civil Procedure Code was in the following terms:—Until the disposal of my appeal in the District Court I pledge my immovable property which is described in the schedule annexed and which is free from all encumbrances, such as mortgage, etc., to the Court. for Rs. 1, 382-4-9 which is the amount of the decree due to plaintiff. If the result of the appeal be against me I hereby bind myself to plaintiff to recover the whole amount of the said decree which I should pay, by my immovable property, and, if the said property be insufficient, from me. Until the whole decree amount is discharged I will not sell or make a gift of the said property to others. I thus execute this security bond. The bond was attested by two witnesses but was not registered. The order of Court "Security accepted" was indorsed on it: *Held*, that the security bond amounted to a mortgage within the meaning of section 58 of the Transfer of Property Act and not being registered was invalid under section 59 of the Act as a mortgage and did not affect the property. The bond was also compulsorily registrable under section 17 of the Indian Registration Act. The words "Security accepted hereby" showed that the Court thought the security sufficient. The bond does not derive its validity from these words, and it cannot therefore be brought within section 17, exception (i) of the Registration Act. *Tokhan Singh v. Girwar Singh*, (32 Cal., 494), followed.

Benson & Munro J. J.

Nagaruru Sambayya v. Tangatur Subbayya 31 Mad., 330.

—Secs. 561 & 577—*Prayer for possession or return of purchase money—Decree for possession appeal—No memo of objections—Order for return of money by appellate Court—Legality thereof.* Where the plaintiff sued for possession of a house from the defendant or for return of the purchase money and the Munsiff gave a decree for possession, but on appeal to the District Judge, he granted the alternative relief reversing the judgment of the Munsiff, it was contended in second appeal that District Judge should not have granted the alternative relief, as no memo of objections was filed against the judgment of the Munsiff.

Held that no memo of objections was necessary. *Kulaikadu v. Viswanath*, 28 Mad., 229 distinguished. *Munro & Abdur Rahim J. J.*

Kuppusami v. Samudra, 4 M. L. T. 266.

—Secs. 562, 588—*Remand—Appeal against order of Powers of Chief Court.* *Held* that as soon as it is held by the Chief court in an appeal against an order of remand passed under section 562 of the Civil Procedure Code by the Lower Appellate Court that the remand order over appealed, is not warranted by the terms of the section in as much as the case has not been disposal of by Court of first instance upon a preliminary point, the Chief Court cannot enter upon, or in any way deal with the spurious preliminary point which the Lower Appellate Court had wrongly held to justify the remand order. The appellant is not at liberty to withdraw in the Chief Court, his objection to the form of order and obtain a decision on point on which according to his contention the Lower Appellate Court should have determined the appeal in his favour 6 P. R. 1892 followed. 1, P. R. 1903, (F. B.) S. C. 1, P. L. Q. 1903, referred to. *Reid J.*

Inam Bibi v. Gulam Husain, 9 P. L. R. 580.

—Sec. 622—*Revision without making an application to Full Bench—Presidency Small Cause Courts Act, sec. 38* *Held* that except under very special circumstances, the High Court will not entertain a revision when a remedy is open elsewhere. *Miller & Sankaran Nair J. J.*

Signor Coppa Angela v. G. D. Angela, 4 M. L. T. 325.

Companies Act (VI of 1882), sec. 128, cl (e)—Petition to wind up—"Other reason of a like nature."—When the law requires the fulfilment of one or more of several conditions before an order could be made, the part fulfilment of two or more of such conditions should not be taken as having cumulative effect justifying the order.

If the Court comes to the conclusion that the main original object for which the Company was formed has substantially failed or that the substratum of the Company is gone it will consider that it would be just and equi-

table to wind up the Company and will make an order for its compulsory winding up. The Court would not be justified in making a winding up order merely on the ground that the Company has made losses and is likely to make further losses.

Davar J.

Shah Steam Navigation Company, In re 32 Bom. 415.

Contempt of Court—*Language which strikes at the root of all respect for the Court and its authority amounts to contempt—criticism of Judge or court how far justifiable.*—An act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority or to obstruct or interfere with the due course of Justice or the lawful process of the court is a contempt of court.

Judges and Courts are alike open to criticism and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court.

Basil Scott C. J. and Batchelor J.

In re Narsinha C. Kelkar. 10 Bom. L. R. 10110.

Contracts—*Cross-contracts—Readiness and willingness to give and take delivery—Breach.*—Where plaintiff entered into cross-contracts with the defendant for the same quantity and quality of goods deliverable between the same dates, and sued to recover the amount of the difference in prices of the two sets of contracts, *held* that he was entitled to the decree without proving his readiness and willingness to take or give delivery of the goods as under the circumstances of the case the parties could never have intended to require actual delivery.

Thakursi v. Tejanmal 1 Sind L. R. 248.

—**Act S. 12.**—*Lunatic—relief—Specific R. Act Ss. 38, 41*—If a party to a contract seeks to enforce a contract which is void under s. 12 of the Contract Act on account of the absence of capacity to contracting party, it is not permissible to give equitable relief. However statutory relief can be given under Ss. 38 and 41 of the Specific Relief act when rescission of a contract is asked for on this ground.

Macleod J.

Monosseh v. Shapurji 10 Bom. L. R. 1004.

—**s. 16.**—*Undue influence—Relation between parties which placed one in a subordinate position essential.*—*Held* that, in order to make out a case for undue influence under s. 16 of the Indian Contract Act, there must be certain relations between the parties anterior to the transaction in question which placed one party in a position to dominate the will of the other.

Evans J. C.

Dwarka Singh v. Raghubir Prasad (11 O. C. 295)

—————**Sec. 24—Criminal Procedure Code sec. 513—Criminal Prosecution—Bail for appearance—Nominal sale deed and rent-note passed to indemnify bail—Suit for recovery of rent—Sale-deed void as opposed to public policy—Rent note and sale-deed part and parcel of same transaction Rent-note void.**—While a criminal prosecution was pending against the defendant his pleader entered into a bail bond for his appearance. To indemnify the pleader against any loss which he might suffer under the bail bond, a nominal sale-deed and a nominal rent-note were passed by the defendant to the plaintiff.

The plaintiff having subsequently brought a suit to recover two years' rent with interest on the strength of the rent-note the defendant met the claim by a denial that the property belonged to the plaintiff.

Held, dismissing the suit, that the consideration for the sale-deed was opposed to public policy. The sale deed was therefore void under section 24 of the Contract Act.

Herman v. Jeuchner (1885) 15 Q. B. D. 561, referred to.

Held, that as the sale-deed and rent-note, which latter was merely intended to secure interest on the principal sum, were part and parcel of one single transaction, the rent-note was tainted with the same illegality which affected the sale-deed and was therefore also void.

Part of a single consideration for one object being unlawful, the whole agreement is void under section 24 of the Contract Act.

Batchelor & Heaton J. J.

Laxmanlal v. Mulshankar 32 Bom. 449.

Court Fees Act—Section 7, (ix,) sch. I., Court fee—Decree for redemption of mortgage—Appeal on the main ground that nothing was due under the mortgage. *Held* that in the case of an appeal from a decree allowing a defendant mortgagor to redeem the mortgage on payment of a sum named therein based upon the ground that the mortgage debt has been satisfied out of the usufruct of the property mortgaged and nothing whatever is due from him, the proper court fee payable is an *ad valorem* fee upon the total amount of the decree under appeal. *Nepal Rai v. Debi Prasad* I. L. R. 27 All., 447) and *Reference under the Court Fees Act, 1870.* 29 Mad., 367) followed.

Aikman J.

Mahadeo Prasad v. Gorakh Prasad, A. W. N., 1908, 247.

Court of Wards—Regulation Collector—Claim made within time—Decree Collector reference to the Decree Collector after claim became barred—Rule framed under the Act—Enforceability of the claim—Limitation

Act, sso 4 and 14. Where there was a Regulation Collector with reference to an estate in the hands of the Court of Wards, and a claim was made to the Regulation Collector within time and the claim was then not barred by limitation and the Regulation Collector without reporting to the Decree Collector about the claim, kept it pending till it would become barred if a suit was filed thereon and then disallowed the claim and reported the matter to the Decree Collector.

Held, on a reference by the Decree Collector, confirming the judgments of both the lower Courts, that the claim should be allowed as it was legally enforceable at the time when it was made to the Regulation Collector.

Benson & Munro J. J.

Regulation Collector v. R. Subber, 4 M. L. T. 321.

Damages—Questions incriminating plaintiffs—Privilege. In a case where the defendant was accused of rioting, certain questions were put as her instance which implied that the charge was brought at the instigation of the plaintiff.

A. P. v. Desai, 4 M. L. T. 222.

Deccan Agriculturists Relief Act, S. 3 and 11—Mortgage suit—Jurisdiction. The plaintiff file a suit against an agriculturist to enforce a mortgage claim in the Court within whose jurisdiction the a mortgaged property was situated, the defendant *inter alia* contended that the Court had no jurisdiction on the ground that he was not residing within its jurisdiction.

Held, that the suit being of the description specifically mentioned in clause (y) of section 3 of the Deccan Agriculturists Act, it was excluded from the scope of clause (w) of the section, and section 11 of the Act was therefore no bar to the jurisdiction of the Court.

Nur Mahomed Lalou v. Sayad Roshan Shan, 1 Sind L. R. 246.

———**S. 12 and 13—Usufructuary mortgage—Redemption—Payment of the amount found due on taking account.** S. 13 of the Dekkhan Agriculturists' Relief Act is imperative and the amount due in a suit for redemption of a usufructuary mortgage in which the provisions of S. 12 of the Act have been complied with, is the amount which is found to be due upon taking accounts in the manner provided by Section 13.

Scott C. J. & Heaton J.

Dadabhai v. Dadabhai, 32 Bom. 516.

———**Sec. 15 B, cls (1) and (2)—Decree on Mortgage—Payment by instalments—Sale on default in payment of an instalment—Appl**

plication to make the decree absolute—Extension of the provisions of the Deccan Agriculturists' Relief Act to the District—Application for payment by instalments. The Court of the First Class Subordinate Judge of Dharwar passed a decree on a mortgage which directed payment of the debt by instalments and on default of the payment of an instalment the debt to be recovered by the sale of the mortgaged property.

The judgment debtor having failed to pay an instalment the decree-holder applied for the decree to be made absolute. In the meanwhile the provisions of the Dekkhan Agriculturists' Relief Act were extended to the Dharwar District and the judgment debtor having thereupon applied for instalments under S. 15B of the Act.

Held, that there is nothing in S. 15B of the Dekkhan Agriculturists' Relief Act to warrant the view that the legislature intended that when a decree allowing instalments had already been obtained, the whole matter should be reconsidered afresh in execution with a view to substitute some new scheme of instalments.

Held, further, that the second clause of S. 15B refers only to those cases where directions for payment have already been given under the first clause of that section.

Batchelor & Heaton J. J.

Shankar Shamrao v. Shankargaulaya, 32 Bom. 445.

Decree—Sale—Execution—Right of purchaser—Estoppel by conduct—Mortgage. In execution of a money-decree certain property was purchased. The said property was subject to a mortgage, but not a mortgage executed by the judgment-debtor, although the judgment-debtor would himself have been estopped from denying liability under the mortgage on account of his conduct in the mortgage transaction. *Held*, that the purchaser was equally bound as the judgment-debtor inasmuch as the right, title and interest of the judgment-debtor had passed to the purchaser, and his purchase was therefore subject to the mortgage. *Mitra & Casperes J. J.*

Prayag Raj v. Sidhu Prasad Tewari, 35 Cal. 877.

Decree—Whether declaratory or one capable of execution—Test. *Held* that in deciding whether a decree is merely declaratory or one capable of execution, the intention of the parties may be taken into consideration.

Sankaran Nair & Abdur Rahim J. J.

Thamaraseri Rama Nambiasan v. E. Neelkandan Nambudari, 4 M. L. T. 380.

Easement—Release—Non-user—Extinguishment—Transfer—Dominant and servient owner—Alienation—Civil Procedure Code, sec. 276.

An easement can be extinguished by a dominant owner releasing it expressly or impliedly to the servient owner, and, if expressly released, it would amount to an alienation. The transfer of an easement is an alienation within the meaning of sec. 276 of the Code. Mere non-user is not an implied release of an easement.

Ohitty J.

Kyistodhone Mitter v. Nandarni Dasse, 35 Calc. 889.

Ejectment—*Suit in*—*Plaintiffs entitled to two-thirds of the property No claim for partition.* Where a plaintiff sued in ejectment, and it was found that he was not entitled to the whole of the property but only to a share.

Held that the suit could not be treated as one for partition between co owners and that the plaintiff could not recover his share of the property in that suit. *Rnmchandra v. Vasudeo*, 10 Bom. 451 followed.

Benson & Miller J. J.

Samindha v. Rangasamy, 4 M. L. T. 215.

Evidence—*Experts*—*Lunacy*—*Value of report*—*Opinion.* The opinion of an expert on facts proved or remitted is only relevant when the Court has to form an opinion on a point of science or art. Expert opinion even on admitted or proved facts will differ and then the Court has to decide which opinion it will rely on. But when the facts are not admitted the Court has first to come to a conclusion on the evidence as to what facts have been proved and then apply to such facts the various expert opinions which have been offered. But if it is not a point of science or art the Court or jury can form an opinion without expert evidence though the line where there no longer remains a point of science or art on which the Court has to form an opinion is not always very clearly defined.

Macleod J.

Monosseh v. Shapurji, 10 Bom. L. R. 1004.

———s. 115—*Non-transferable occupancy jote*—*Presumption of transferability without consent of landlord from purchase by him.*—Where a landlord in execution of a money decree causes the sale of an occupancy holding and purchases it himself, he is not estopped from pleading non-transferability without his consent in a subsequent suit brought by the mortgagee of the occupancy raiyat. The English law of mortgage and a consequent estoppel is not applicable to such a case. Section 115 of the Evidence Act is exhaustive and the law of estoppel in this country is contained in that section. *Ayenuddin Nasya v. Srish Chandra Bannerji*, 11 O. W. N. 76, distinguished.

Rampini C. J. & Ryves J. J.

Asmatunnessa Khatun v. Harendra Lal Biswas, 35 Calc. 904.

—**Sec. 115—Estoppel—Adoption—Suit by adoptive mother to set aside an adoption made by her.** In a suit to set aside an adoption brought by the adoptive mother against her adopted son it was found that the plaintiff had represented that she had authority to adopt and his representation was acted on by the defendant; that the ceremony of adoption was carried out on the faith of this representation; that the marriage of the defendant was likewise on the strength of it celebrated, and the defendant performed the *sraddh* ceremony of his adoptive father. It was further found that the defendant had been obliged to defend a suit brought against him by an alleged reversioner to the estate of his adoptive father, and that for this purpose he had incurred heavy liabilities. *Held* that the plaintiff was estopped from maintaining a suit for a declaration that the adoption was without authority and void. *Thakor Oemrao Singh v. Thakoarane Mehtab Koonwer*, N. W. P., H. C. Rep., 1868, p. 153A, distinguished.

Stanley C. J. & Bannerji J.

Dharam Kunwar v. Balwant Singh, A. W. N., 1908, 231.

—**Secs. 124, 162—Income Tax Acts, Secs. 14, 26 and 38—statements made to Income Tax Collector—Admissibility in evidence—Right of the Court to inspect.**—*Held* that the returns submitted to an Income Tax Collector, or any statements made before him or any orders that are passed by him do not relate to matters of state and are not exempt from production under the terms of sec. 123 of the Evidence Act.

Held further that no objection can be taken for the inspection of the said documents by Court with a view decide the question of admissibility.

Held also that sec. 124 of the Evidence Act would not apply and the documents are admissible in evidence. *Lee v. Birrel* (3 Camb. 337); *Reg. v. Vakataz 2* (Madras Sessions 1863). Mayne's Criminal Law of India 3rd Ed. P. 91); *Jadobram v. Bultoram* 26 Cal. 281); Referred to and followed. *Joseph v. Hargreaves* (L. R. Ch. (1900), 347. Distinguished.

White C. J. & Sankaran Nair J.

R. Venkata Chella v. G. E. Sampathu 4 M. L. T. 317.

Fraud—Rights of an attaching creditor—Apparent sale to third party of property not really bringing to the judgment-debtors—Claim by apparent purchaser recognised in suit—Suit by purchaser for possession. Where to prevent the attachment and sale in execution of a decree obtained against the father, the son transferred by sale his self-acquired property to the plaintiff benami and the property was subsequently attached by the plaintiff and his claim as owner of the property was established in a suit to which the son was a party.

Held in a suit by the plaintiff to recover possession from the son, that the son could not set up in defence the *benami* nature of the transfer.

Miller & Abdur Rahim J. J.

Kondeti Kanna Rao, Tollanakkummu, 4 M. L. T. 381.

———*Preference of creditors*—Except in cases falling under the provisions of the Bankruptcy Law a judgment debtor is at full liberty to alienate his property at any time before or until it is *in custodia legis* to any one of his creditors for genuine and adequate consideration although the effect of such an alienation may be to defeat or delay the claims of other creditors.

Rathigan & Lalchand J. J.

Tahori Mal v. Ganga Ram, 3 P. W. R. 534.

Grant—Act XI of 1859—Regulation XIX of 1793—Sale—Encumbrance—Liability to pay rent. Some years before the acquisition of the Dewani by the East India Company, the zemindar made a rent-free grant of village P, to one D. Since then D., and after him his heirs continued in possession of the village, until the institution of this suit. After the acquisition, the Company made an assessment of the lands in the Bengal Province, and village P., was then and again at the time of the Permanent Settlement, assessed at *sicca* Rs. 80, which assessment was accepted by the zemindar, and he and his heirs continued to pay the assessed amount. In the year 1900 the zemindar made a default in payment of the revenue for the September *kist*, and the village was sold under the provisions of Act XI of 1859. The purchaser instituted a suit for recovery or for assessment of rent and mesne profits. *Held* that the right created under the grant was an incumbrance, which existed from before the time of the Permanent Settlement; but the plaintiff could not be affected by the laches of the defaulter or his predecessors; he was entitled to hold the estate in the same condition as it was at the time of the Permanent Settlement, when the revenue was assessed at *sicca* Rs. 80 and to recover that amount with cesses from the defendants. *Held further*, that sec. 37 of Act XI of 1859 does not avoid encumbrances of every kind nor does it allow the purchaser to assess rent at a rate higher than that paid before the Permanent Settlement; the rent is not enhancible according to the law now in force, as the land must be considered to be comprised in a tenure existing from before the time of the Permanent Settlement.

Mittra & Brett J. J.

Bgindaban Behari Lal v. Bhawani Sahai, 35 Calc. 981.

High Court Rules.—Rule 31 Third part notice—application to be before filing written statement—Practice and Procedure.—An application for a third party notice under Rule 131 of the Bombay High Court Rules, must

be made before the written statement is filed, unless special leave has been obtained from the Court.

Macleod J.

Nippon Menkwa v. Gurmukrai 10 Bom. L. R. 1024.

——— *Rule 122—Civil Procedure Code—sec. 491—arrest before judgment Damages for wrongful arrest—Damages for arrest cannot be tried by counterclaim—Practice.*—Pending a Civil suit against him, the defendant was arrested before judgment but was afterwards released. He then made a claim of Rs. 25000, against the plaintiff as damages for his wrongful arrest and applied to include in the suit his counter claim of Rs. 25000. *Held*, it could not be done.

Macleod J.

Magoomal Jethanand v. Hamid Bin Ali Bin Kamil 10 Bom. L. R. 1002.

Hindu Law—Adoption—Rule that no adoption allowed where no marriage possible between the natural mother in her maiden state and adopting father—Limitations of the rule—Gotras—Prawars—Viruddha Sambandha—Under Hindu law, the rule that there can be no adoption where there can be no legal marriage between the adopted boy's mother in her maiden state and the adoptive father is strictly confined to the specified cases of a daughter's son, a sister's son and the mother's sisters' son.

Hence, where the natural mother of the adopted boy and the adoptive father though belonging to different gotras have two out of three *prowars* in common, the adoption can be validly made.

Per Batchelor J. The authority of Nanda Pandita must be accepted except where it can be shown that he deviates from, or adds to, the *smritis*, or where his version of the law is opposed to such established custom as the Courts recognise.

Batchelor & Chaubal J. J.

Ramchandra v. Gopal 10 Bom L. R. 948.

——— **Adoption—Widow succeeding as a gotraja sapinda in a joint Hindu family to an estate not her husband's—Powers of adoption.**—A. and S. were two joint Hindu brothers. S. died in 1876 leaving a widow P. and two daughters him surviving. After S.'s death, P. continued to live with A., who died in 1877. P. succeeded him as there was no issue or nearer heir to A. P. adopted defendant 1 as a son. The plaintiffs, some of whom were reversioners entitled to succeed to A as his heirs after the termination of P.'s life estate, sued to recover possession of the property, alleging that P. was not authorized to make the adoption she did, and it was, therefore, bad. *Held*, that the adoption by P. was invalid.

A Hindu widow who succeeds to an estate not her husband's but as a *gotraja sapinda* of the last male holder under the rule established by *Julloo-*

bhoy v. Cassibai (L. R. 7 I. A. 212) and in consequence of the absence of nearer heirs, cannot make a valid adoption. *Amava v. Mahadgauda* 22 Bom. 416, and *Payapa v. Appana* 23 Bom. 327, doubted. *Ramkrishna v. Shamrao* 26 Bom. 526, followed. *Batchelor & Chaubal J. J.*

Datto Govind v. Pandurang Vinayak 32 Bom. 499.

—————**Adoption**—*Alienation by the widow before adoption. Right of the adopted son to dispute the alienation.*—Where a Hindu widow who has inherited, her husband's property adopts a son, the adoption has the effect of divesting her of the property and putting an end to her estate as heir of her husband. The adoption has the same effect as her death with this difference, that after the adoption she has a right of maintenance against the adopted son during the rest of her life whereas such right ceases on her death. But the right of maintenance, so long as it is not a charge on the estate or any portion of it does not confer on her any right to the estate or entitle her to transfer it by way of sale or mortgage. If the widow before the adoption severs a portion of the inheritance therefrom and transfers it to a stranger, without any proper or necessary purpose binding the estate absolutely according to Hindu law, the transfer logically speaking must cease to have any effect after the adoption, since it could only operate during the time that the estate was represented by her as heir and the result of the adoption is to terminate that estate. *Chandavarkar & Heaton J. J.*

Ramkrishna Kuppuswami v. Tripurabai Kuppuswami, 10 Bom.

L. R. 1029.

—————**Joint family**—*Ancestral property—Doctrine of nucleus—Difference between joint property, joint-family property and joint-ancestral family property.* The three notions—(1) joint property, (2) joint-family property and (3) joint-ancestral family property are distinguishable. In all three things there is a common subject—property; but it is qualified in three different ways. The joint property of the English law, is property held by any two or more persons jointly, and its characteristic is survivorship. Analogies drawn from it to joint-family property are false or likely to be false for several reasons. The essential qualification of the second class, is not jointness only, but a good deal more. Two complete strangers may be joint tenants, according to English law: but in no conceivable circumstances could they constitute a joint Hindu family, or, in that capacity, hold property. In the third case, property is qualified in a two-fold manner: it must have been joint family property and it must be ancestral.

There must have been a nucleus of joint family property before ancestral joint-family property can come into existence. because the word ancestral

connotes descent and therefore pre-existence. But because it is true that there can be no joint ancestral family property without a previous nucleus of joint family property it is *not* true that there cannot be joint family property without a pre-existing nucleus, for that would be identifying joint family property, with ancestral joint family property.

Where there is ancestral joint family property, every member of the family acquires by birth an interest in it, which cannot be defeated by individual alienation or disposition of any kind. This is equally true of joint family property. Where it is known or admitted that some at least of the property of a joint family has come down to them the presumption is that the whole property is ancestral, and any member alleging that it is not, will have to prove it self-acquisition. Where property is admitted or proved to be joint family property, it is subject to exactly the same legal incidents in every respect as property which is admitted or proved to be ancestral joint-family property. Further, this class of property in India differs radically in origin and essential characteristics from the joint property of the English law.

The fundamental principles of the Hindu joint family is the tie of Sapindaship. Without that it is impossible to form a joint Hindu family. With it as long as a family is living together it is almost impossible not to form a joint Hindu family. There is nothing either in practice or theory which excludes the possibility of members of the same family starting a family fortune holding it as members of a joint family, and thereby clothing it with all the legal qualities and incidents of joint family property, chief among which is that every member born into the family after the property has acquired that character, and before it has been divested by partition obtains by birth an interest in it.

Beaman J.

Karsandas Dharamsey v. Gangabai, 32 Bom. 473.

——— **Joint family**—*Presumption as to the character of the property held by the father*—*Self-acquisition*. A Hindu, who had a son and that son's son living with him, made a deed of gift of his property in favour of his grandson. In that deed the property was described as his self-acquired property; and the deed was attested by his son. It was shown that the son had knowledge of the contents of the deed. *Held*, that the above facts led to the inference that the property was self-acquired.

Batchelor & Chaurbal J. J.

Kalianji v. Bezanji, 32 Bom. 512.

——— **Maintenance**—*Right of wife who had lived apart from her husband during his life time to claim maintenance after his death*—*Father*

in-law having ancestral property bound to maintain under such circumstances. A wife living apart from her husband without any justifying cause, is not entitled to claim maintenance from him, as in so doing she commits a breach of duty to him. After his death, however, she is entitled though she lives apart to claim maintenance from her father-in-law who has taken her husband's estate as there is no duty on her part to live with him, provided she does not live apart for corrupt purposes.

Per WALLIS J.—A wife living apart from her husband for no improper purpose, may, at any time, return and claim to be maintained. Her right is not forfeited but only suspended during the time she commits a breach of duty by living apart and is revived when at his death such duty ceases to exist. The Court may, under the circumstances, be justified in awarding her maintenance on a less liberal scale than it otherwise would.

Per SANKARAN NAIR J.—The father-in-law is under a moral obligation to maintain his daughter-in-law, which ripens into a legal obligation against the assets in the hands of his heirs. *Rangammal v. Echammal*, 22 Mad., 305 at 307, referred to. The husband is under a moral obligation to support a wife when she is living apart from no corrupt motive; and this moral obligation ripens into a legal obligation on the father-in-law when, on the death of the son, he takes ancestral property. The rights of a wife and widow respectively to maintenance, rest entirely on different grounds. The former is a personal obligation on the husband based on the identity arising from marriage relations and is not dependent on the possession of property. The right of a widowed daughter-in-law to claim maintenance from her father-in-law is based on the possession of ancestral property by the latter and cannot be defeated by any breach of duty on her part towards her husband which might disentitle her to enforce a distinct claim in respect of a different relation and on account of considerations peculiar to that relation.

Wallis & Sankaran Nair J. J.

Surampalli Bangarama v. Surampalli Brambaze, 31 Mad. 338.

———*Restitution of conjugal rights—Custody of wife—Hindu husband deserting his wife for many years—Discretion of Court in restitution of conjugal rights.* Held that even a Hindu husband becomes deprived of his right of enforcing marital rights and getting custody of the wife when he deliberately deserted and has for years past failed to give her maintenance.

Kensington & Richards J. J.

Dani v. Naran Singh, 3 P. W. R. 531.

———*Succession—Bandhus, preference among—Male Bandhus*

entitled to preference over female Bandhus though never in degree—Accretions, what are,—Accretions pass with estate—Adverse possession, title acquired by—Party holding under a deed or will which is invalid cannot set up a higher right than that claimable under the deed or will. It is settled law in this Presidency that a male Bandhu is entitled to preference over a female Bandhu even though the latter is nearer in degree. Where additions are made to an estate by a limited owner with the intention that they should form part of the estate such additions pass with the estate and not to the heirs of such owner though made with funds over which such owner has absolute powers of disposal. Where a female, having the limited interest of a daughter or widow in an estate, spends the income which is her absolute property in the erection of buildings on lands belonging to the estate it must be presumed that she intended the buildings to be an accretion to the estate and to devolve, as such, on the persons who would be entitled to succeed to the estate. A person holding land under a deed or will, which however, does not operate in law to pass land in question, cannot by such possession for more than twelve years, acquire an interest in the property different from that which he would have taken if the deed or will had been valid and operative. A, who was entitled to an estate and to the management of a temple as hereditary trustee or dharmakarta, gave his widow, B, by will, the estate because according to the law (Dharma Sastra) the kartaship (heirship) vests in my wife, and he further directed her to conduct the dharmakartaship of the temple. B, gave, by deed, both the estate and dharmakartaship to her daughter C 'as according to the Hindu law, you are the chief heir after me': Held, that B, under the terms of will of A and C, under the terms of the deed of B, took no more than a woman's limited estate under the Hindu law both in the estate and in the dharmakartaship; and that neither B nor C could acquire by possession an interest in the property higher than that which they would have taken if the property had passed by deed or will.

Benson & Miller J. J.

Raja Venkata Narasimha Appa Rao v. Rajah Surenani Venkata Purushothama Jagannadha Gopala Row, 31 Mad. 321.

———Widow—Payment by wife of husband's debts during his life time—Voluntary payment—Joint Hindu family—Sale of property belonging to one member of a joint family—Separation—Sale set aside—Rights of persons entitled to such property after separation—Held that the payment by the wife of a separated Hindu of her husband's debts during his lifetime must be considered in the absence of evidence to the contrary as a voluntary payment, and will not support an alienation by the widow after her husband's death of the estate which has descended to her from him.

Held also that the members of a joint Hindu family must be regarded, so far as concerns the dealings of the family with persons outside it, as but one juristic person.

The managing member of a joint Hindu family sold a property exclusively belonging to one member of the joint family, and the proceeds of the sale were brought into the common purse for the benefit of the family.

Held that on the sale of that property being set aside after the separation of that member, he could recover the whole property on payment of the whole purchase money, but that he could not claim to have it by paying only a share of the purchase money proportionate to his share in the joint family property on partition. *Stanley C. J. & K. Husain J.*

Himmat Bahadur v. Bhawani Kunwar 30 All. 352.

—————**Widow.**—*Alienation by the widow—Permanent lease by the widow—Necessity.* A permanent alienation of immoveable property by a Hindu widow can only be justified on the ground of necessity. The necessity required involves some notion of pressure from without and not merely a desire to better or develop the estate, for this last implies vast powers of management which in practice would not easily be distinguishable from an authorisation to embark upon speculative ventures. A Hindu widow can alienate in order to preserve the estate; but she is not entitled to alienate it merely in order to improve it. *Batchelor & Chaubal J. J.*

Ganapa v. Subi, 10 Bom. L. R. 927.

—————**Widow's estate**—*Alienation of a portion of estate without legal necessity—Consent of next reversioner.* Alienation by Hindu widow of a portion of her husband's estate without legal necessity, but with the consent of the next reversioner, is valid. *Marudamuthu Nandan v. Srinivasa Pillai*, 21 Mad. 128, discussed and not followed. *Behari Lal v. Madho Lal Ahir Gayawal*, 19 Cal. 296, L. R. 19 I. A. 30 explained. *Radha Shyam Sircar v. Joy Ram Senapati*, 17 Calc. 896, distinguished. *Nobokishore Sarma Roy v. Hari Nath Sarma Roy*, 10 Calc. 1102, *Hem Chunder Sanjal v. Sarnamoyi Debi*, 22 Cal. 354, *Vinayak Vithal Bhange v. Govind Venkat Kulkar* 25 Bom. 129, *Baij Rangi Singh v. Manokarnika Baksh Singh*, 30 All. 1, L. R. 35, I. A. 1, and *Anand Kumar Roy v. Intra Bhushan Mukhopadhyaya*, 12 C. W. N. 49, followed. *Rampini & Ryves J. J.* *Pullin Chandra Mandal v. Bolai Mandal*, 35 Cal. 989.

—————**Will**—*construction of gift to female—Gift for maintenance may be of an absolute estate—Where testator gives a female immoveable property for maintenance and makes several devises*

of other properties to others and adds a clause declaring the gift to be absolute, the gift for maintenance will be an absolute gift—Devisee in possession of land under an invalid will must be presumed to prescribe for the estate given by the will.) An absolute gift of immoveable property to a widow for maintenance is not unknown to Hindus or repugnant to their ideas of propriety. In construing a will, every portion of it, must be given the full effect which, on a natural and grammatical construction of the will, must be allowed to it, and no portion of it ought to be rejected unless such a construction makes the provisions of the will inconsistent with each other or leads to results which must be repugnant to the testator's ideas of propriety. Where a Hindu testator by his will gave immoveable property to a widow stating it to be for her maintenance and, after making various other gifts, added a clause by which he declared all the gifts under the will should be absolute, there is no such inconsistency or repugnancy in giving the clause its natural and grammatical construction by making it applicable to the gift to the widow, and she will accordingly take an absolute interest in the property. By so construing the will, the subsequent clause only removes the ambiguity in the case of all the gifts and does not alter any material portion of the will. The statement by the testator that he gave such property 'out of sympathy' will not affect the absolute nature of the estate given if there was no legal obligation on him to provide for such widows maintenance in his will. Where a person takes possession of property under a will, which cannot legally operate to convey, the person so entering on possession must be presumed to prescribe for the interest which the will purports to give him; and the burden of proving that he prescribed for something less will be on the party alleging it.

White C. J. & Miller J.

Ramachandra Naiker v. Vijayaragavulu Naidu 31 Mad. 849.

———**Wills—Construction thereof—Indian Succession Act, sec. 101 and 102—Testator's intention with reference to the residue.** A testator provided with reference to the residuary estate in his will that "should my son S., who is the executor to this will be willing to divide and give properties my grandsons may attain age, he shall divide the same into five shares as I have had four sons, and give away the same to their respective sons, that is to say my grandsons. He shall give away the share of such son of mine as may not beget a grandson to me) to himself, Should he not be willing to effect a division he may deliver up the properties to such of these persons, namely his brothers or his sons, or his brother's son as may be competent to cause matter to be conducted properly as my eldest son S., who is the chief person) or executor to this will and testament has been

conducting them. Should the (chief person) or executor S., be not willing to do so he may as he thinks proper arrange that at least the administrator General should conduct matters for a fixed time in the same manner in which he himself shall have conducted matters and that (the properties) should thereafter be divided and given to the aforesaid grandsons or that the same should be delivered upto them in fact without division.

Held that the intention of the testator was that the distribution should take place only after all the sons who might be born to the sons of the testator had attained their majority. *Held* further that the disposition was invalid under ss. 101 and 102 of the Indian Succession Act.

White C. J. & Sankaran Nair J.

P. Q. Sivasankara Pillai v. P. Q. Subramania Pillai, 4 M. L. T. 306

Inams—Resumption—Position of former Inamdars. Where a resumption consists merely in the corporation of the inam in public revenue the right in the land possessed by the grantee of the inam or his successor is not extinguished. *Gunnaiyan v. Kamakchi*, 26 Mad. 346 followed.

Miller & Pinhey J. J.

Perumal v. Syed, 4 M. L. T. 305.

Interest—Payable under a contract—Creditor dead—No legal representative—Debtor's liability to pay interest—Cessation of liability. *Held* that where interest is payable under the terms of a contract and when the debtor is ready to pay but there is no one to whom payment can be made owing to the death of the creditor and the absence of a legal representative, interest stops running until such time when there is a proper representative of the deceased creditor to whom payment can be made and who can give a proper discharge for the debts. *Wallis J.*

Administer General of Madras v. Jaghirdar of Arni, 4 M. L. T. 335.

Insolvency Act (St. 11 and 12 Vic. c. 42) Ss. 7, 26—Insolvent's property at Shanghai—Order vesting the property in the official assignee at Bombay—A British subject in possession can be ordered to deliver the property to the official assignee—Commission to examine witness at Shanghai. When a trading firm is declared insolvent by the Court for the relief of Insolvent debtors at Bombay, it can order the moveable property of the firm in Shanghai to be vested in the official assignee of the Insolvent Debtor's Court in Bombay and the Court can order the person in possession of the property at Shanghai to hand over such property to the official assignee in Bombay.

If the person in possession at Shanghai is a British subject he is

subject to the insolvent jurisdiction of the Consulate Court at Shanghai and that Court can order him if requested so to do by the Insolvent Court of Bombay to produce all the movable property, books, papers and documents of the insolvent's firm that may be in his possession.

A commission can be issued by the Court for the relief of Insolvent Debtors at Bombay for the examination of a British subject at Shanghai through H. B. M.'s Supreme Court at Shanghai. *Russel J.*

Re Naoroji, 10 Bom. L. R. 965.

Jurisdiction of Civil and Revenue Courts, Punjab Tenancy Act (XVI of 1887) S. 77 (3)—*Landlord and Tenant—Occupancy tenant—Haq bua (Door-tax)—Declaratory suit by occupancy tenant denying liability.* Held by the Full Bench, that a suit for declaration that the plaintiffs, who are occupancy tenants, resident in a village are not liable to pay "door tax" (Haq bua) is cognisable by the Revenue Court and not by the Civil Court. *Full Bench.*

Gamun v. Kdrim Khan, 9 Pun. L. R. 559.

Kathiawar—Original side of Agent's Court. Where the Decennial value of the land claimed by Bhayats goes beyond the limits of the jurisdiction of their chief, the case is disposed of on the original side of the Agent's Court (Rules 9 of the Rules of 1898).

Jadeja Bapuji v. Jadeja Pancoanji, 18 K. L. R. 238.

———*Partition—Non-jurisdictional estate and partition.* If an estate is non-jurisdictional, there is no political objection to its partition, if such is the family custom. 18 K. L. R.

———*Practice—Dismissal of appeal for the fault.* An appeal in a Giras case is not dismissed for default when there are important arguable points to be considered, and even if the heirs of the representatives of a deceased appellant or appellants are not brought on the record, within 6 months, by the surviving brothers, the heirs are not debarred, and in such cases even the spirit of the Civil Procedure Code is not followed.

Jhala v. Talukdars of Dudhrej, 18 K. L. R. 227.

———*Santi Vero.* Owing to the weakness of a Talukdar (Chief) to levy *santi vero* (plough tax) on the land of his Bhayats (collaterals) the Agency fixed a lump sum subject to revision after every 15 years. In the first revision, the sum was raised, but in the second one, the then Talukdar demanded the restoration of his right to levy the vero instead of levying a lump sum, and the Court decreed the claim but *gharkhed* was then first claimed by the Bhayats, it being exempt from the levy.

Held that, as when the lump sum was fixed in the first revision, the *santi vero* was calculated on the whole culturable land, and yet the Bhayats did not ask to exclude their gharkhed from calculation, nor did they do so in review applications made for reduction of the amount, though that was the most obvious and forcible allegation they could have put forward, the matter was *res judicata*; that the question of gharkhed was, therefore, rather substantially than incidentally in issue in those decisions; that the existence of gharkhed must be in evidence before the sole enjoyment of the Bhayats began, since after the introduction of a lump sum levy, the Bhayats might for convenience reserve any portion of the village for home cultivation when given out lands for cultivation to cultivators; that the Court was not satisfied that the Bhayats must, of necessity, have gharkhed according to custom; that in the case of Mulgirassias, it might be probable that upon commendation some land would naturally be reserved as true gharkhed but that in the case of Bhayats, the Court should be guided by the terms of the grant in each case; that the grant by the Crown must be construed in the Crown's favour. (Bhadwa case, G. R. 3613 of 11-7-84 quoting 6 Bom H, C. R. 191).

Jadeja Bapubha v. Jadeja Panchanji, 18 K. L. R. 238.

Land Acquisition Act (1 of 1894), sec. 23—Compulsory acquisition—Compensation—Market value of land—Passage on the land—Dedication to the public.—Under sec. 23 of the Land Acquisition Act, 1894, the Court has to ascertain the market value of the land, all separate interest being taken to have combined to render the land available for sale in the market.

If the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public. Although the passage is originally intended only for private convenience, the public cannot be excluded from it after being allowed to use it very long without interruption. The fact that the road is not lighted by any public authority makes no difference.

Batchelor & Chaubal J. J.

Jalbhoy v. Secretary of State for India 10. Bom. L. R. 931.

—**S. 23—Compulsory acquisition—Land—market value additional percentage for compulsory acquisition.**—Under the Land acquisition act s 23 sub-s(1) in determining the amount of compensation to be awarded for the land the court shall take into consideration first, the market value of the land, to which may be added various other sums for damage and expenses under headings secondly or sixthly in that sub section. Under sub-s. 2 fifteen per-

tum for compulsory acquisition are to be added only to the market value of the land and not to that part of the compensation which may be payable under the other heads; when there are no claims for compensation under these heads the compensation payable is the market value of the land.

There is no provision in the Land Acquisition Act for the acquisition of anything less than the permanent interest in the land and 'land' in the Act must mean land irrespective of any interests which have been created in it.

The words "the compensation which should be allowed for the land" in s. 11 of the Act cannot be paraphrased into compensation for those interests in the land which are not vested in Government.

The market value of land by which under s. 23 (1) of the Land Acquisition Act the Court is to be guided in fixing the compensation has nothing to do with the value of the tenant interest. MacLeod J.

In re Esufali Salebhai 10 Bom. L. R. 994.

———ss. 25, 27, 54—*Appeal lies against an award of costs under s. 25—Section 27 does not allow a pleader's fee to be fixed arbitrarily—Fees to be allowed on the valuation as laid down in the Civil Rules of Practice or according to the rules applicable to the particular Court.*—Under section 25 of the Land Acquisition Act, an award of costs is a part of the award and is appealable as such under section 54 of the Act. Section 27 does not authorise the Court to allow any amount for pleader's fee at its discretion. Where the subject-matter is capable of being valued, pleader's fees must be allowed on the scale laid down in the Civil Rules of Practice or on such other scale as may be in force for the particular Court. Miller J.

Khambara Gramany v. Muniswamy Gramany 31 Mad., 328.

———S. 30.—*Referring parties to Court.*—When the compensation payable for the land is fixed, the Collector has to apportion it amongst the persons interested and he has to satisfy himself that the claimant or claimants can produce a *prima facie* title to receive the compensation and in case of dispute between claimants he can refer them to the Court under s. 30 of the Land Acquisition Act 1894. MacLeod J.

In re Esufali Salebhai 10 Bom. L. R. 994.

———*Jurisdiction of Collector.* The Collector's jurisdiction is limited to make an offer for the compensation payable for the land. If there are several claimants he can apportion the compensation amongst them, but the offer has to be made to the claimant as a body; there is not a separate offer to each claimant of the amount apportioned to him. The term

claimant includes a body of claimants in whom are vested all the lesser interest in the land to be acquired.

The Collector has no jurisdiction to try questions of title between Government and the claimant. *Imad Ali Khan v. The Collector of Farukabad*, 7 All. 87., followed.

If the Collector proceeds with the inquiry he is directed to make under the Land Acquisition Act, that amounts to a confession of title in the claimant or claimants, and having arrived at the compensation payable for the land under sec. 11 of the Act, he ought if he makes an offer at all to offer that to the claimant; he has no right whatever to retain any of it on behalf of Government.

MacLeod J.

In re *Usufali Salebhai*, 10 Bom. L. R. 994.

Landlord & Tenant—Lease for a term—Provision for renewal—Failure to renew—Effect thereof. Where a lease for a period of 39 years provided for renewals at successive periods of 12 years from the date of the lease, held that mere failure by the tenant to renew at the succession periods would not operate as a forfeiture of the tenancy so as to relieve the tenant from all liability to pay rent under the lease.

White C. J. & Sankaran Nair J. J.

Bourammiah v. Mallamal, 4 M. L. T. 315.

—————**Concurrent leases—Landlord entitled to recover rent only as against second lessee.** Held that where a lessor executes two concurrent leases of the same property, that is to say, two leases in which the term of second commences before the term of the first has expired, the second lessee is to be taken as the assignee of the lessor's interest during the concurrent portion of the terms, and the lessor after the execution of the second lease can recover rent only from the second and not from the first lessee. *Harmer v. Bean*, 3 C. and K. 307, followed.

Stanley C. J. & Karamat Hnsain J. J.

Ram Anant Singh v. Shankar Singh, 30 All 369.

—————**Forfeiture—Suit for possession—Determination of lease.** Held that a landlord suing a tenant in ejectment on the ground of forfeiture should show that by some act or other, he declared his intention to determine the lease before bringing the suit.

White C. J. & Benson J.

Venkatarama v. Gunda, 4 M. L. T. 221.

Limitation—Gift—No registered instrument—attornment by tenant for a term to the donee under the invalid gift—Possession of donee whether adverse from date of attornment or from date of termination of lease. A

deceased Karnavan had made a gift to his niece of a plot of ground which had been already leased by him for 12 years and made the tenant to attorn to the niece. The gift was not made by a registered instrument and hence the wakf found invalid.

Held in a suit after 12 years from date of attornment by the Karnavan who succeeded the deceased for possession of the plot that as there was no determination of tenancy, mere attornment to the donee would not make the possession of the latter adverse.

Munro & Pinhey J. J.

Acharath Bappan Karanavan of Tirwad v. Mathummal Chovi

4 M. L. T. 327.

Limitation Act, Articles 91—*Suit for cancellation of a deed—Suit for a declaration that the transaction evidenced by the deed was fictitious*) A suit for a declaration that a transaction embodied in a particular deed was from its very inception a sham transaction is to be distinguished from a suit for cancellation of the deed. The former kind of suit does not fall within the purview of article 91 of the second schedule to the Indian Limitation Act.

Stanley C. J. & Bannerji J.

Jagardeo Sing v. Phuljhari, 30 All. 375

———**Art. 152 (5), Civil Procedure Code, s. 248**—*Date of issuing notice.* *Held* that the Code of Civil Procedure, section 248, "as used in article 179 (5) of the Limitation Act, means the date upon which the Court passes an order for issue of a notice under section 248, not the date upon which such order actually issues.

Aikman & K. Husain J. J.

Jumai Kanjar v. Abdul Karim Khan, A. W. N., 1908, 245.

———**Article 179—Execution of decree—Appeal—Appeal not pressed.** Where there has been an appeal from a decree limitation does not the less begin to run from the date of the final decree in appeal because the appeal may have been dismissed upon the representation of the appellant's counsel that he was unable to support it. *Jeeyavgar v. Lakshmi Dass*, 16, M. L. J., 393, followed. *Hingan Khan v. Ganga Parshad*, 1 All., 293, and *Fazl Hussain v. Raj Bahadur*, 20 All., 124, distinguished.

Aikman & Griffin J. J.

Fazl-lur Rahman v. Shaa Muhammad Khan, 30. All. 385.

Lunatic.—*Contract by Lunatic not known to the other contracting party—General presumption of insanity, rebuttal of.* Where a person is not proved to be a lunatic in acquisition it is necessary to rebut the general presumption of insanity. This can be done by proving that this mind was deranged so that he was incompetent to enter into any contract or by pro-

ving that he was of unsound mind with regard to the particular transaction. In a case where a contract is impugned by the defendant on the ground of his insanity, it is open to the plaintiff to rely on defendant's conduct in transacting business in general and in-particular in putting through the impugned transaction as evidence of capacity. On the other hand, it is open to the defendant to show that though he was not generally incapable as regards the particular contract either on the ground that he suffered from delusions which influenced the contracts in such a way that his delusion formed the foundation of the contract or on the ground that owing to general enfeeblement of mind he did not understand the contract in question.

A man who is suffering from delusions may very well perform acts which are not influenced by such delusions, and when it is attempted to set aside a transaction entered into by a man suffering from delusions the Court has to decide whether the delusions, influenced the disposition or contract and if so to what extent.

Macleod J.

Shapurji Hormusji Haver, 10 Bom L. R. 1004.

Madras City Municipal Act, Ss. 322 & 323—Storing iron—Conviction under sec. Legality thereof.—Using a place for storing iron is not using it for a purpose which may endanger life, health or property and a conviction under sec. 323 of the Madras City Municipal Act is not maintainable.

Benson & Wallis J. J.

T. T. Aroomooga v. President 4 M. L. T. 321.

Mahommadan law,—Pre-emption—Shafi-i-khalit.—Held that a person who had certain rights in the property of a third party in respect of which the owner of property the subject of a suit for pre-emption also had certain rights, but of a different description could not be considered entitled to pre-emption under the Muhammadan law as a *shafi-i-khalit*.

Burkitt & Richards J. J.

Musharraff Ali v. Shaukat Ali, A. W. N., 1908, 239.

Mortgage—Priority—Transfer of Property Act (IV of 1882), sec. 78—Gross negligence.—Held that mere failure to obtain the title-deeds would not by itself amount to gross negligence within the meaning of sec. 78, of the Transfer of Property Act. *White C. J. & Sankaran Nair J. J.*

Munusamy v. Raja Gopala 4 M. L. T. 217.

—————**Redemption—Meaning of "Ta miyad das sal tak giraw rahu lea kabza rahka lai"**—Right of mortgagor to redeem—meaning of the term "foreclosure" in the Punjab.—Held, that, in the absence of any words clearly signifying that the mortgagor is not to redeem for a certain period

he can redeem it at any time, and that any phrase in the deed simply reciting that the mortgage is for a certain period should be regarded as a clause inserted for the benefit of the mortgagor and intended to protect him from fore closure for a period and not to hinder him from redeeming within that period; and that the word "*ta miyaad das tak girau rahu ba Kabza rakha hai*" mean, in the absence of any further words showing for whose benefit the period of ten years was fixed, the mortgagee is not to foreclose till the end of that period.

Kensington & Chevis J. J.

Firoze-ud-Din v. Firoze-ud-Din 3 P. W. R. 482.

Negotiable Instruments Act (1881), sec. 80—Interest collateral agreement—Nattukattai Chetties—Bill of Exchange—Construction. Held that amongst Nattukattai Chetties who trade under names made up of a series of initials, firm transactions are indicated by the initials which are the name of the firm being prefixed to the name of the signatory.

Held further that in considering whether a signature in a bill of exchange is that of a principal of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Obiter:—Sec. 80 of the Negotiable Instruments Act does not affect the validity of a collateral agreement to pay interest at a specified rate as to which the document is silent.

Wallis J.

Mungumal v. A. L. V. R. C. T. Firm, 4 M. L. T. 309.

Parsi Marriage and Divorce Act (IV of 1865) Sec. 32.—Divorce adultery of petitioner.—Under s. 32 of the Parsi Marriage and Divorce Act 1865, adultery of the petitioner is a legal ground on which the Court can refuse the petition for divorce.

Chandavarkar & Heaton J. J.

Meherbai v. Hormasji N. Motiwala 10 Bom. L. R. 1019.

Partners—Right of suit—One partner taking a promissory note from other members, in respect of sums advanced to the partnership can sue on the promissory note.—Where one of several partners takes a promissory note from other members in repayment of an advance made by him to the partnership it is competent to him to bring a suit on the note against the members executing it. It is no answer to such a suit that the general accounts of the partnership were not taken at the time the promissory note was given and that if such accounts were taken, it would appear that nothing was due to plaintiff. Such a defence amounts to a set off of an unliquidated amount, which is not allowable.

Wallis & Munro J. J.

Vallamkondu Subbiah v. Malupeddi Venkataramiah 31 Mad., 343.

Practice—Cross objections—not pressed—costs— Held that the court has jurisdiction to pass orders with regard to the memorandum of objections where no stamp is paid on the same and the memorandum is not moved.

White C. J. & Abdur Rahim J.

Palvi Kumarasami Pillai v. S. U. Udayar Nadan 4. M. L. T. 303.

———**Refusal of Court of first instance to examine all the plaintiff's witnesses—Appeal by defendant decreed—Remand—**Owing to the direction of the Court of first instance only a portion of the evidence available in support of the plaintiff's case was recorded by that Court, which decreed the plaintiff's suit. On appeal, however, the lower appellate Court took a different view of the plaintiff's evidence and dismissed the suit. *Held* that the plaintiff should be given an opportunity of producing the evidence which had not been recorded owing to the attitude taken up by the Court of first instance.

Stanley C. J. & K. Husain J.

Pabitra Kunwar v. The Maharaja of Benares, 30 All. 367.

Pre-emption.—Wajib-ul-arz—Co-sharer—Owner of resumed muafi land. The pre-emptive clause of a wajib-ul-arz contained the following provision:—*Minjumala malikon-ke agar koi hissadar apni haqqiat bai karne chahne to awal dusre hissadar sharik haqqiat-ki rath bai karega.* " *Held* that the owner of resumed muafi land (which had been resumed before this wajib-ul-arz was framed) in the same khemat as the land sold was entitled to pre-emption as against a vendee who was merely a co-sharer in a different khewat.

Stanley C. J. & Burkitt J.

Narain Prasad v. Munna Lal, 30 All. 329.

———**Wajib-ul-arz—Construction of document—Muhammadan law.** The pre-emption clauses of a wajib-ul-arz contained the following provision:—"The zemindar of the *khalsa* is one person, hence there is no custom of pre-emption in the *khalsa*; but among the owners of the *khalsa* and *milks* the following custom of pre-emption obtains." The *khalsa* subsequently came to have more owners than one. *Held* that no right of pre-emption was given by his wajib-ul-arz to the owners of the *khalsa* *inter se*, but that a sale of a share in the *khalsa* was subject to the Muhammadan law of pre-emption. and this irrespective of the fact that a vendee was a Hindu.

Stanley C. J. & K. Husain J.

Ram Lal v. Bahadur Ali, 30 All. 372.

Pre-emption—Wajib-ul-arz—Construction of document—Custom or contract.—The wajib-ul-arz of village in the Saharanpur district of the year 1867 contained the following agreement on the part of the "khewatdars" of the village that "up to the term of the settlement and in future to the

termination of the next settlement they will abide by the following terms and act upon them." Amongst the subsequent provisions were certain relating to the right of pre-emption. In a later *wajib-ul-arz* of 1890 no mention was made of any custom of pre-emption, but it contained these words:—"For the remaining village customs see the *wajib-ul-arz* prepared in 1867."

Held, that the *wajib-ul-arz* of 1867 recorded a contract and not a custom, and that the rights conferred by it would not be perpetuated by the incorporation in the later *wajib-ul-arz* of the customs existing in the village.

Stanley C. J. & K. Husain J.

Budh Singh v. Gopal Rai, A. W. N., 1908, 246.

———— *Vendee's re-selling the property to one of the Vendors before pre-emption suit—Right of pre-emptor, when the resale is to a third party having superior right and when it is in favour of the Vendor himself.*—*Held*, that, whenever a pre-emptor sues for pre-emption upon a sale and it is found that before his suit the Vendee has transferred the property to a third party, the test is whether the pre-emptor has a superior right of pre-emption in regard to the first sale as compared with the transferee, and that where it is re-conveyed to the original vendor, the pre-emptor must succeed as the former cannot have any a right of pre-emption whatever in regard to the sale which he himself made.

Johnstone & Chitty J. J.

Vendor v. Mahashu 3 P. W. R. 476.

———— *Vendee's re-selling property to vendor before pre-emption suit not affecting pre-emptor's right.*—*Held*, that, Vendee's reselling to the Vendor the property subject to pre-emption does not deprive the pre-emptor of his right of pre-emption even if the resale has taken place before the pre-emption suit is lodged.

Chevis J.

Sukha v. Arura 3 P. W. R. 479.

———— *Wajib-ul-arz—Construction of document*, A *wajib-ul-arz* recorded a right of pre-emption as existing in favour of certain persons "for such price as a stranger may pay." *Held* that the right of pre-emption only arose in the case of a sale to a stranger. *Khatun Bibi v. Sayida Bibi*, 27 All. 457 followed.

Stanley C. J. & Bannerji J.

Narain Saran Singh v. Sidh Narain Singh, A. W. N., 1908, 251 = 5 A. L. J. 655.

Presidency Banks Act (XI of 1876), sec. 50—Bank of Bombay
—*Right of a shareholder to inspect register of shareholders of the Bank—Object of such inspection—Common law right of member of corporation to inspect books of the corporation—Companies Acts (X of 1866), sec. 231, IV*

of 1882), *sec. 256*.—The respondent as a shareholder in the appellat Bank claimed a right to inspect, copy, and make extracts from the register of shareholders which the Bank refused to allow, but offered to furnish him with the list he asked for if he could satisfy them that he required it for use in his own interests as a shareholder. Without accepting this offer the respondent brought a suit against the Bank in which he based his claim on irregularities which he alleged existed in the management of the Bank, in the election of Directors and in other matters, and stated that he claimed inspection of the register to enable him to communicate with the other shareholders and obtain their assent to resolutions for improvement in the Bank's management to be proposed at a future meeting. The first Court dismissed the suit, but the High Court on its Appellate Side reversed that decision and passed a decree giving the respondent without any restriction the right to inspect, copy and extract from the register which he had originally demanded from the Bank.

Held, by the Judicial Committee that the suit should be treated according to the principles regulating an application for a writ of mandamus, and in that view the respondent was not entitled to succeed unless he showed clearly that he had the specific right to enforce which he asked, for the interference of the Court, that he had claimed the exercise of that right and none other, and that his claim had been refused.

In this case there was no statute giving him an unrestricted right, the appellat Bank (which was incorporated under Act XI of 1876) being by section 231 of the Companies' Act, 1866, and section 256 of the Companies' Act, 1882, expressly exempted from the operation of those statutes.

The result of the authorities as to the nature and extent of the common-law right which every member of a corporation has to inspect the documents of the corporation was that "the privilege of inspection was confined to cases where the member of the corporation has in view some definite right or object of his own, and to those documents which would tend to illustrate such right or object."

On the evidence the respondent had not brought himself within the principles so laid down and his claim should therefore not be allowed. *Raz v. Merchant Tailors' Company* (131) 2 B. & Ad. 115, followed.

He was not entitled to the extended right given him by the decree of the appellate Court, and the limited and qualified right contended for in the suit was never put forward or insisted on before action brought nor was any claim based on it ever refused. P. C.

Bank of Bombay v. Suleman Somji 32 Bom. 466.

Punjab Courts Act (XVIII of 1884 as amendd) S. 70 (1) (a) *Revision—Civil cases—Material irregularity—Ignoring the effect of document—Wrong interpretation of document.* Held that though a wrong interpretation of a document does not amount to a material irregularity within the meaning of S. 70 (1) (a) of the Punjab Courts Act justifying interference in revision by the Chief Court, yet where the lower Court has completely ignored the terms of a document or has placed on them a per-versely erroneous construction, the Chief Court is fully justified in revising the judgment of the lower court.

Rattigan J.

Gulla Singh v. Sundar Singh, 9 Pun. L. R. 563.

Punjab Pre-emption Act (II of 1905 Local) S. 2.—Pre-emption Rights of members of vendor's tribe and other agriculturists. Held that under S. 2 of the Punjab Pre-emption Act a member of the vendor's tribe has a superior right of pre-emption to that of an agriculturist, as defined in S. 2 of the Punjab Alienation of Land Act.

Kensington & Lalchand J. J.

Mahmud v. Nar Ahmed, 9 Punj. L. R. 569.

Punjab Tenancy Act (XVI of 1887) S. 5 (1) (b)—Landlord and tenant—Occupancy rights—Shamilat deh—Muafi—Resumption of status of owners of land in possession as tenants When land the revenue of which has been assigned, is on resumption settled with the Mufadar's heir, he is ordinarily entitled to receive the landlord's profit in the land, and to eject the tenants unless they can prove that they have acquired a right of occupancy. The mere facts that the land is land owned in common by the whole village and that some members of the proprietary body are the cultivators of the land do not give these cultivators a right of occupancy.

Wilson J.

Kartar Singh v. Purnan, 9 Pun. L. R. 584.

—S. 77 (3) (j)—Jurisdiction of Civil and Revenue Courts—Suit by a Chamar for recovery of haq-sep. Held that a suit by a chamar for the recovery of haq-sep due to him under the terms of the wajib-ul-arz of the village is cognizable by a Civil Court.

Reid J.

Gujar v. Dula, 9 Pun. L. R. 582.

Railway Act (IX of 1890), secs. 47, 54, 172 and 140—Ultravires—Bye-law or rule made by any Railway Company inconsistent with or not authorised by any of the provisions of the Act—Contract Act, secs 152 and 161—Condition on reverse of a Railway receipt for passenger's delivery of packages entered thereon. A, started in the train of the Bombay-Garoda and Central India Railway Company to Delhi from Kolaba where he had

ded over to the Railway Officials seven packages and obtained a receipt therefor on which condition No. 4 provided, among other things, that a written statement of the description and contents of the articles missing must be sent forthwith to the Traffic Superintendent of the District in which the forwarding or receiving station is situated; otherwise the Railway Company will be freed from responsibility.

At Delhi only six packages were delivered to A. He failed to act in accordance with the said condition but complied with sec 77 of Act IX of 1890. In the suit brought by A., for receiving price of the missing or non delivered package.

Held, also, that no rule or Bye-Law made by any Railway Company which is inconsistent with or not authorized by any of the provisions of Act IX of 1890, even if sanctioned by His Excellency the Governor General in Council, is valid.

Held, further, that condition No. 4, above referred to, is a Bye-Law and is inconsistent with sec. 77 and relates to a matter not intended to be dealt with by Bye-Laws under sec. 53 (1) of Act IX of 1890 and is therefore *ultra vires* of the Railway Administration and not enforceable with regard to the provisions of these 2 sections.

Johnstone & Lalchand J. J.

Azizul v. The Bombay Baroda and Central India Railway Company,
3 P. W. R. 487.

———**Ss. 77, 144**—*Claim for compensation for short delivery*—*Notice of claim on whom to be served*—*Service on Traffic Manager*. The notice of claim under S. 77, Railways Act, must be served under S. 140 of the Act on the Agent of the Company. But the law does not require that the notice should be physically thrust in the Agent's hand. It is sufficient if it appears from the findings that the Agent has had full knowledge and notice of the claim. Where from the Rules of the Railway Company it appeared that the Traffic Manager in the claims department settles all such claims and the Agent also refers to him claims for disposal.

Held, that the notice to the Traffic Manager was sufficient.

Holmwood & Sharfuddin J. J.

V. Woods v. Meher, 13 C. W. N. 24.

Registration Act, S. 77—*Agreement of partition not registered oral evidence*—*Admissibility thereof*—*Admission in written statement*. Where a deed of partition was not registered, *Held* that it was not admissible in evidence to prove the transaction in so far as it affected the immoveable properties divided among the parties, but was admissible to prove the coparceners therein referred to had become divided members.

Held (Per Pinhey, J.) that the document was further admissible to prove the arrangement come to regarding the moveables.

Held also that where a suit is based on a document inadmissible in evidence owing to its being not registered and no secondary evidence could on that account to be given of its contents, still a decree might be given on the admission of the defendants. *Sankaran Nair & Pinhey J. J.*

S. A. Subrdhmaniam Iyer v. Savitri Ammal, 4 M. L. T. 354.

——— **Ss. 47, 50**—*Sale of property subject to an unregistered mortgage—Notice of mortgage served after execution of sale-deed but before registration—Purchaser whether bound.* Where property is sold which had a previous unregistered mortgage existing in respect of it, the registration of mortgage not being compulsory, and notice of the mortgage is served on the vendee after the sale deed is executed but before it is registered the purchaser is bound by the mortgage. *Diwan Singh v. Jadho Singh*, 19 All. 145 and *Bhikhi Rai v. Udit Narain Singh*, 25 All. 366 applied.

Knox J.

Khiali Ram v. Himmata, 5 A. L. J. 607.

Religious Endowments Act (XX of 1893), sec. 14, 18—*Religious institution—Manager, appointment and dismissal of—jurisdiction of Civil Court—Civil Procedure Code, section 539—Sanction of Collector when necessary.* No previous sanction is necessary to bring a suit by the manager of a religious instrument for his re-installment, 122, P. R. 1890, followed.

So far as the muafi grant is concerned the executive authorities have the right of superseding a muafidar for improper application of the funds entrusted to him and in that case they have the sole responsibility for appointment of his successor within the conditions of the original grant. Previous sanction either under sections 14 and 18 of Act XX of 1868 or section 539 of the Civil Procedure Code is necessary before a suit can be filed for the removal of the manager of religious institution. It is not open to a self constituted committee in the event of dispute with the manager to take the matter into their own hands, and if they do so they run the risk of a successful suit by the ex-manager for re-installment.

In such particular case it has to be considered whether the previous sanction for a suit to be obtained under Act XX of 1868, or under sec. 539 of the Civil Procedure Code. *Robertson & Kensington J. J.*

Bansi Dhar v. Chhanga Ram, 9 Pun. L. R. 576.

Revenue sale—Purchase, Benami—Right of real purchaser to contest. There is nothing to preclude a purchaser at a revenue sale being shown to be a mere benamidar.

Narayaneami v. Govindasami, 29 Mad., 473, followed. *Narayan v. Ohhokkappa*, 25 Mad., 655, referred to. *Munro & Pinhey J. J.*
Venkatachalan v. Purshotam, 4 M. L. T. 316.

Sale—Fraud—Setting aside of sale—Respondent in England—Service—Practice. Where on the first day of sale the judgment-debtor's partner's bid was not accepted and on the second day there was some understanding between her (the partner) and the decree-holder that they would not bid against each other but that she would get the property back for the amount of the decree, and the property was purchased by the decreeholder.

Held, that there was no fraud on the part of the decree-holder which would justify a Court in setting aside the sale. The respondent having left for England, notice of the appeal was served on him through appellant's agent in England pointed for that purpose, the notice having been made over to the appellant's Vakil who transmitted it for service to the Agent in England.

Rampini C. J. & Ryves J.

Second appeal—Delay in presentation—Appeal dismissed—High Court's power to extend time for payment. *Held* that the High Court has power to extend time for payment even when the appeal is dismissed on the ground of limitation in presenting the appeal.

Miller & Sankaran Nair J. J.

Venkatapatly Aiyer v. Thirupathi Goundan, 4 M. L. T. 341.

Small Cause Courts Act—(Presidency) Act 15 of 1882, S. 69—Negotiable Instruments Act, S. 84 (2)—Question whether cheque was presented within reasonable time is a question of fact and cannot be referred to the High Court by Presidency Court of Small Causes. The Presidency Court of Small Causes referred to the High Court, under S. 69 of the Presidency Small Cause Courts Act, the question whether a cheque was presented within a reasonable time. *Held*, that under S. 84 (2) of the Negotiable Instruments Act, the question must be determined with regard to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case. The question is one of fact and not of law and is not one which can be referred to the High Court under S. 69 of the Presidency Small Cause Courts Act.

Benson & Muuro J. J.

D'Sena v. Dr. T. M. Nair, 31 Mad. 364.

Specific Relief Act, S. 9—Criminal Procedure Code, S. 145—Possessory suit—Effect of order of a Criminal Court—Revision. *Held* that the existence of an order passed under S. 145 of the Code of Criminal Procedure is no bar to the institution of a suit under S. 9 of the Specific Relief Act, for recovery of possession of the same land.

Held also that when a suit under S. 9 of the Specific Relief Act is decreed the remedy of the defendant lies not in revision but in the institution of a suit for a declaration of the defendant's title and for possession.

Stanley C. J. K Husain J.

Jwala v. Ganga Prasad, 30 All. 331.

———**Section 42—Proviso—One plaintiff out of possession—Other plaintiff in possession in defendant's right—Declaratory suit—Second suit for possession.** Where out of two plaintiffs to a suit for declaration of title it appeared that one was not in possession of the property claimed and the other was in possession but in the right of the defendant who had previously been in possession, *held*, that the suit was barred by the express provisions of section 42, Specific Relief Act, and ought to be dismissed. But the dismissal of the suit would not affect the right of these plaintiffs if they were entitled to possession from instituting and maintaining a suit for possession.

Stanley C. J. & Bannerjee J.

Akbar Khan v. Turaban, 5 A. L. J. 640.

———**Sec. 42—Possession—Suit for declaration of title—Application for partition in Revenue Court—Objection—Land Revenue Act, (Act III of 1901), Sections 111, 233 (k).** The plaintiffs who were lambardars objected under sec. 111 of the Land Revenue Act to an application for partition made by the defendant, alleging that the latter had no share in the zemindari and they were required to institute a suit in the Civil Court accordingly the present suit for declaration was brought.

Held that the plaintiffs being admittedly in possession as lambardars. All that was needed was a declaration to the effect that the defendant had no title and such a declaration having been made by the Civil Court, it would not be necessary for plaintiffs to seek any further relief. The suit therefore was not barred under the provisions of section 42, Specific Relief Act.

Held also that section 233 (k) Land Revenue Act, did not apply to the case as it was provided for by section 111 of that Act and the decision of the Civil Court referred to in the latter section meant the "final decision of that Court."

Stanley C. J. & Bannerjee J.

Ram Charan v. Ram Partab, 5 A. L. J. 614.

Stamp Act (II of 1899,) S. 2, cl. (15)—Undivided brothers—Documents purporting to be lists of properties—Each document signed by the brothers excepting the one retaining it—Each document formed the title of the brother retaining it with respect to his share—Instrument of partition—Stamp. Four undivided brothers made four lists of the family property. Each list was signed by three brothers and not by the fourth, who retained it. A question having arisen whether the lists constituted a partition between the brothers and required to be stamped as such under the Stamp Act.

Held, that the four documents formed, when read together, an instrument of partition within the meaning of S. 2, clause 15, of the Stamp Act. Each document formed the title of the brother retaining it against the other three brothers with regard to the property which came to his share when the partition was effected.

(F. B.)

Ganpat v. Supdu, 32 Bom. 509.

Succession Certificate Act—Act VII of 1899, S. 19—Section 3 of Act XXIV of 1839 and rule X of rules framed thereunder—General Clauses Act of 1868, S. 2 (12)—Agent to the Governor, Vizagapatam, is a District Judge within S. 19 of Succession Certificate Act and an appeal lies to the High Court against his order—Scope of inquiry in proceedings under Succession Certificate Act. S. 2 (12) of the General Clauses Act of 1868 defines a District Judge as the Judge of the Principal Civil Court of Original Jurisdiction. Under S. 3 of Act XXIV of 1839 and rule X of the rules framed thereunder, the Agent is the Judge of the Principal Court of Civil Jurisdiction within the Agency. The Agent is therefore a District Judge within the definition in S. 2 (12) of the General Clauses Act of 1868. The General Clauses Act of 1868 was in force in 1889, when the Succession Certificate Act was passed and the Agent to the Governor, Vizagapatam, is a District Judge, and the Court presided over by him is a District Court as defined in S. 3 of the Succession Certificate Act. An appeal therefore lies to the High Court under S. 19 of the Succession Certificate Act from the order of the Agent as from an order of the District Court. *Chakrapani v. Varahalarma*, 18 Mad. 227, not followed. In inquiries under the Succession Certificate Act, the Court may decline to decide points which will involve a lengthy and complicated inquiry. *Wallis & Munro J. J.*

Babubalendruni Guruvaraju v. Chandrasekaraju, 31 Mad. 362.

—————**Sec. 2, 4—Deferred dower—Debt—Mahomedan Law.** Dower whether it be prompt or deferred, is a debt due from the husband to the wife. Deferred dower is a debt payable in the future. A court, therefore, cannot pass a decree for its recovery by the heir of the lady without the production of a succession certificate. *Stanley C. J. & Burdett J. J.*

Abdul Karim Khan v. Makbul-un-nisa Begum, 5 A. L. J. 598.

Suit Valuation Act (VII of 1887), sec. 3—Jurisdiction of Civil Court—Valuation of suit—Pre-emption suit—Suit for possession of land assessed with land revenue—Definite portion of revenue paying khata.

Held that the value for purposes of jurisdiction of a suit for possession of land assessed with revenue where the land claimed is a definite portion of a revenue paying khata, is thirty times such portion of the revenue as may be rateably payable in respect of that portion.

Clarke C. J.

Fatta v. Khan Bahadur, 9 Pun. L. R. 561.

Tort—Malicious abuse of process—Damages, attachment under sec. 483, C. P. C.—Insufficient grounds—Special & general damages—Whether malice need be proved. *Held*, that an order under sec. 483, C. P. C. pas

sed on an application made on insufficient grounds, must necessarily cause damages to the credit and reputation of the party against whom the order is passed and general as well as special damages are recoverable in a suit at his instance. *Quartz Hill v. Eyre*, 11 Q. B. D 674, applied.

Quaere:—Whether malice need be proved in a suit for compensation for attachment under sec. 488, O. P. C. made on insufficient grounds.

White C. J. & Abdur Rahim J.

Palwi Huwara v. S. U. Udayar, 4 M. L. T. 303.

Transfer of Property Act, sec. 41—Application for a personal decree against mortgagor—Limitation Act, article 116. Held that the fact that there is no express personal covenant to pay the mortgage money is no bar to the mortgagee obtaining a personal decree under sec. 90 of the Transfer of Property Act, against the mortgagor if the requirements of the section are otherwise fulfilled: a personal covenant to pay is implied in and is an essential part of every simple mortgage. *Sawaba v. Abaji Jotirav*, 11 Bom., 475, not followed. Held also that on an application under section 90 of the Transfer of Property Act it is the date of filing the suit which has to be looked to in considering the question whether the balance is legally recoverable from the defendant. *Homid-ud din v. Kedar Nath*, 20 All., 386, followed. *Aikman & Griffin J. J.*

Jangr Singh v. Chandar Mol, 30 All. 388.

———**sec. 59.—Deed—Execution of deed—absence of attestation—signature by the writer of the deed—signature by Registrar under sec. 63 A of the Dekhan Agriculturists Relief Act—Not valid attestations.**—A deed of mortgage bore at its conclusion the signature of the writer of the deed, and also the signature of the sub-Registrar under sec. 63 A of the Dekhan agriculturists Relief Act. It was not separately attested by two witnesses as required by sec. 57 of the Transfer of Property Act, Held that neither the one nor the other signature can be treated as an attestation; and the deed, therefore was not validly executed.

An attesting witness is a witness who has seen the deed executed and who signs it as a witness. *Scott C. J. & Chandavarkar J.*

Ramu v. Laxmanrao 10 Bom. L. R. 943.

———**Ss. 59, 100.—Mortgage-deed not attested as required by s 59 cannot create a charge under s. 100**—An instrument, which is invalid as a mortgage for want of attestation under section 59 of the Transfer of Property Act, cannot operate to create a charge under section 100 of the Act. *Royzuddi Sheik v. Kalinath Mukerjee*, 33 Calc. 985, followed.

Wallis & Sankaran Nair J. J.

Sameo Patter v. Abdul Sammad Saheb 31 Mad., 337.

———**S. 85**—*Mortgagee releasing mortgaged property cannot enforce entire claim against the other properties*—Section 85 of the Transfer of Property Act does not necessitate the dismissal of a suit where no relief claimed against persons not joined as parties. "A mortgagee cannot release a part of the mortgaged land and then seek to enforce his entire claim upon another portion in which third parties have become interested as assignees of the equity of redemption." A suit is not liable to be dismissed under section 85 of the Transfer of Property Act for non-joinder of persons interested in portions of mortgaged property when no relief is claimed against them. The plaintiffs ought, in such cases to be allowed to recover what is due to them not exceeding the amount rateably due on the property they proceed against.

Benson & Miller J.

Ponnusami Mudaliar v. Srinivasa Naickan. 31 Mad., 333.

———**section 85**.—*Parties adverse claimants, whether may be joined suit for sale.* Adverse claimants ought not to be made parties to a mortgage suit for the purpose of litigating their titles, and that the only proper parties to such a suit are persons interested in the equity of redemption *Jaggaswar Dutt v. Bhuvan Mohan Mitra* 33 Cal. 425 followed.

Richards J.

Khairati v. Banni Begam. 5 A. L. J. 604.

———**section 91 (a) 92**.—*Reversioner's right to redeem in the lifetime of widow—Interest meaning of.*—A reversionary heir cannot get a decree for redemption of property mortgaged by the deceased husband of a Hindu widow during the lifetime of the widow in possession of the estate. The provisions of section 92, Transfer of Property Act, do not apply to a person who is a reversionary heir and may never become entitled to the property sought to be redeemed.

The interest referred to in section 91 (a) of the Transfer of Property Act is a present interest and not a mere contingent right such as a reversioner possesses.

Stanley C. J. & Banerji J.

Ram Chander v. Kallu 5 A. L. J. 631.

———**Sec. 93**—*Decree execution—Decree nisi—Decree absolute*—Civil Procedure Code, sec. 93. An application for redemption or foreclosure under a decree nisi is not an application in execution under the Civil Procedure Code but must be made in Court under the Transfer of Property Act, and until decree nisi is made absolute there is no decree capable of execution.

Macleod J.

Sir Jehangir O. Jehangir v. The Hope Mills Ltd. 10 Bom. L. R. 1057

Trust—Revocation—Deed construction—Constriving deed as well.—If an instrument is a deed in form in order to hold that it is testamentary or in the nature of a will there must be something very special in the case and unless there are circumstances which compel the court to treat an instrument in the form of a deed as a will the court will not do so.

Held also that the settlor of certain properties on certain charitable trusts who appointed himself as hukdar for life and his grandson as hukdar after his death could not by a subsequent deed revoke the appointment of his grandson and appoint a stranger. *Benson, & Wallis J. J.*

Mahadeva Iyer v. Sankara Subramania Iyer, 18 M. L. J. 450.

United Provinces Land Revenue Act. s. 36.—Application to fix rent—Suit to recover rent on alleged agreement—Res judicata.—The plaintiff sued to recover rent on the basis of an alleged agreement between himself and the defendants for an exproprietary holding and a non-occupancy holding, but the suit was withdrawn as to the former. In a previous proceeding, under section 36 of the Land Revenue Act the same agreement had been considered by an Assistant Collector. *Held* that the decision arrived at by the Assistant Collector as to the validity or otherwise of the agreement could not make that question *res judicata* as regards the present suit.

Stanley C. J. & K. Hussain J.

Shohrat Singh v. Sonkala Kunwari, A. W. N., 1908, 250.

———**S. 111—Partition—Objection to title—Declaratory suit in Civil Court—Act No. 1 of 1877 (Specific Relief Act), s. 42.**—On application for partition being made by one co-sharer, other co-sharers, who were lambardars objected that the applicant had no share and was not entitled to partition. Upon this the objectors were directed to go to the Civil Court to have the question of title thus raised determined. *Held* that the objectors, being lambardars in possession, were not bound to ask for more than a mere declaration that the applicant had no title, and section 42 of the Specific Relief Act had no application.

Stanley C. J. & Banerji J.

Ram Charan v. Ram Partab, A. W. N., 1908, 249.

Will—Construction of document—Persona designata. By the terms of a will the testator gave all his property to his wife for her life, and then declared that after her death Lalta Prasad, his adopted son, should be owner of the property. The testator's wife predeceased him. *Held* that after the death of the testator Lalta Prasad took as a *persona designata*, whether in fact his adoption was valid or not. *Nidhoomoni Debya v. Saroda Iershah Mookerjee*, L. R., 3 I. A., 253, followed.

Stanley C. J. & Banerji J.

Lalta Prasad v. Salig Ram, A. W. N., 1908, 249—4 A. L. J. 526.

DIGEST OF INDIAN (CRIMINAL) CASES.

Bengal Disorderly Houses Act (III of 1906 B. C.) S. 2.—*Dancing girls—Singing obscene songs—Brothel—Habitual prostitution.* In order to bring a case under S. 2 of Act III (B. C.) of 1906, it must be shown, first, that the house is in the vicinity of an educational institution or a boarding house, hostel or mess, and, secondly, that it is used as a brothel for the purpose of habitual prostitution or is used by disorderly persons of any description.

Where a house is occupied by a male and the members of his family, two of the members are dancing girls, who are kept mistresses of gentlemen and who sing songs sometimes of an obscene character *Held*, that the house is not used as a brothel or for the purpose of habitual prostitution.

Mitra & Fletcher J. J.

KAKIL RAM v. THE EMPEROR, 6 C. L. J. 710.

Burma Municipal Act, S. 142 (c).—*Pawn broker.* The respondents were prosecuted for taking goods in pawn without being licensed pawn brokers and in contravention of bye-law 2 of the bye-laws under S. 142 (c) of the Burma Municipal Act (I), and had thereby committed an offence punishable under S. 180 (1) of that Act. (Burma Act No. III of 1898.)

Held, that to show that a person comes within the definition of pawn broker it must be proved that he carries on the business of lending money on the security of goods pledged with him and that he holds himself out to lend money on security and is in the habits of doing so.

Held, that there can be a taking in pawn, even though no fixed time be agreed on for repayment of the loan on account of which goods are deposited as security.

Hartnoll J.

EMPEROR v. KANAPA, 13 Bur. L. R. 269.

Calcutta Municipal Act (Ben. 3 of 1899), Ss. 408, 419, 574 and 631.—*Prosecution—Limitation—Bustee improvement—Notice—Date of offence—Subsequent notice under S. 419—Extension of time by Corporation.* Where a notice under S. 408 of the Calcutta Municipal Act was served on the owner of a bustee on the 3rd March 1906, directing certain improvements within three months from its date, but the owner failed to comply with it and served a notice under S. 419 of the Act on the 2nd

July, whereupon the Corporation gave her further time till the 2nd January 1907, and instituted a complaint on the 23rd January for non-compliance with the terms of the notice of the 3rd March 1906.

Held, that the three months having expired on the 2nd June 1906, the offence was committed on the next day, and the prosecution was, therefore, barred under S. 631; and that the notice under S. 419 and the extension of time by the Corporation, both being after the date of the offence, were ineffectual in extending the period of limitation.

Mitra & Caspersz J. J.

KUMUD KUMARI DASSI v. CORPORATION OF CALCUTTA, 34 Cal. 909.

Cantonments Act (13 of 1889), S. 13.—*Supply—Intoxicating drug—Supply of liquor to a European soldier—Servant of a soldier buying liquor with soldiers money for soldier's use.* The accused, a servant of a soldier, bought with his master's money liquor from a shop in obedience to his master's directions and gave it to him. On these facts, the Magistrate held that the act of the accused amounted to "supplying" liquor to a soldier within the meaning of the term as used in S. 13 of the Cantonments Act, and convicted and sentenced him under the section.

Held, reversing the conviction and sentence, that the term "supply" in S. 13 of the Cantonments Act must have a restricted meaning put upon it and it is inapplicable in the case of a servant giving his master liquor belonging to the master himself. Its context "barter or sells" indicates that it has the same idea underlying it in common with them. It also must relate to a transaction between two persons dealing at arm's length and therefore independent of each other.

Chandavarkar & Hexton J. J.

EMPEROR v. PASCAL SHIMAU, 31 Bom. 523.

———**Ss. 76, 79 and 96.**—*Cantonment Committee Delegation of powers—Powers delegated to a Committee—of two not exercisable by surviving members.* Where power to issue notices in respect of breaches of Cantonment rules was delegated by the Cantonment Committee to a sub-committee of two members, it was held that a notice issued by a surviving member of the sub-committee only was invalid. *Gopal Sahai v. King Emperor*, (Punj. Rec., Cr. J. 7907, p. 8) followed. *Aikman J.*

EMPEROR v. RAM SARANDAS, A. W. N., 1907, 275 = 4 A. L. J. 694.

Confession—Suspicious—Practice as to relying on where there is no other proof—Held, that when there is no judicial proof of the guilt of an accused person, it is illegal to rely upon an unreliable or suspicious

confession or a confession which is open to grave suspicion of having been produced by ill-treatment of the Police.

Held, further that when an accused person makes two criminating statements, one before a Magistrate and another before a police officer, it is very essential to compare them and to try and ascertain why there occurred a change and which of them were true one, with a view to testing the value of the confession before the Magistrate. The other being of course inadmissible for any other purpose whatever as made to the Police.

Clark C. J. & Kensington J

KHAIR DIN v. THE CROWN 2 P. W. R. 70

—S. 136—*Magistrate not empowered to take security to keep the peace*—*Juris diction of Appellate Court*—When the Magistrate originally convicting an accused person is not empowered by law to take security to keep the peace, the Appellate Court has no jurisdiction to proceed under sec. 106, Criminal Procedure Code 1898,

Chatterji J.

RADHA SINGH v. THE CROWN 2 P. W. R. 77

Criminal Procedure Code s. 10—Security to keep the peace—Wrongful act—Ascertainment of the rights of the parties—Which party should be bound down—Criminal Procedure Code s. 107—Riparian right—Right to khuntagir—The preventive jurisdiction of a Magistrate under s. 107 of the Criminal Procedure Code must be exercised with caution. If the existence of a right claimed by one party in a proceeding under the section is denied by the opposite party, and is not quite patent, the Magistrate should always endeavour to ascertain for the purpose of the proceeding their respective rights and liabilities, and not in all cases treat them as matters proper for the Civil Court exclusively. Where a doubt exists as to the existence of the rights and obligations, respectively, of the parties, the Magistrate should bind both parties down. Where however, there is no doubt, the party in wrong should be bound down, and not the one who has the legal right. No order of the Magistracy should in any way encourage the infringement of a legal right. or prevent the exercise of such right in a legal way, or do away with, even temporarily, the performance of an obligation. The right to the forshore is riparian right and ordinarily goes with the land above, and the proprietor has *prima facie*, the right of *khuntagari* or tolls. *Dhunpaut Singh v. Denobundhu Saha*, 9 C. L. R. 270 followed.

Mitra & Caspersz J. J.

DINDAYAL MOZUMDAR v. EMPEROR 34 Calc. 935

—————**Secs. 107, 145**—*Disputes concerning Jalkar—Procedure*—Where a dispute likely to cause a breach of the peace is a *bona-fide* one relating to a fishery right, proceedings under section 145 and not under sec. 107 of the Criminal Procedure Code should be instituted.

The words in section 145 are mandator while those in sec. 107 are discretionary. *Dhanu Khan* 25 Cal. 539 followed.

Mitra & Fletcher J. J.

BALAJIT V. BHAJU 6 C. L. J. 697

—————**Sec. 110**—*Land lord—Tenants of bad character—Lending money and settling dispute—Association*—The facts that a landlord has tenants of bad character, that he lends money on paddy when the latter are in difficulty, and because they are his tenants, and that he settles disputes between two men, one of whom is a thief and the other is not, do not subject him to a proceeding under sec 110 of the Criminal Procedure Code.

The mere association with men of bad character is not sufficient, unless the association is to commit theft or dacoity, to bring him under sec. 110 of the Criminal Procedure Code. *Mitra & Fletcher J. J.*

NILKAMAL V. EMPEROR 6 C. L. J. 711

—————**Sec. 145, cl. (4)**—*Evidence taken by subordinate Magistrate on direction*—A Magistrate dealing with a case under sec. 145 Cr. P. C. is not competent to direct evidence to be taken not by himself but by the subordinate Magistrate; and an order passed without jurisdiction is liable to be set aside.

Wallis J.

ARUMUGU V. VENKATASUBBIE 17 M. L. J. 535

—————**Sec. 145, 537**—*Parties—Present—notice not posted—Irregularity—effect of order*—Where parties to a proceeding under sec. 145 of the Code of Criminal Procedure had notice of the proceedings and had their cases fully heard by the Magistrate, the order should not be set aside in revision even though the provision of the section were not strictly complied with and the parties were not personally served and no notice was fixed at the disputed property. The object of the section merely is to prevent a breach of peace by maintaining one or other of the parties in possession.

Richards J.

DEBI PRASAD V. SHEODAT. 4 A. L. J. 705

—————**Ss. 164**—*Right of accused to copies of statements made by Magistrate under*—An accused person under remand is not, before the commencement of the preliminary inquiry, entitled to be furnished with

copies of statements made on oath by various persons and recorded by the Magistrate under section 162 and 164 of the Code of Criminal Procedure. No such right is conferred by the Code of Criminal Procedure and the question whether any person has a right to inspect a public document is outside the scope of the Evidence Act. Such statements may, however, be put to contradict the persons making them when called as witnesses and it will then form part of the record, of which the accused will be entitled to a copy after commitment. There is no general principle of common law which would entitle an accused person to copies of such documents. *Queen Empress v. Arumugam*, 20 Mad. 189 distinguished.

Benson & Wallis J. J.

EMPEROR v. MUTHIA SWAMIYAR 30 Mad. 466

———**S. 97**—*Cattle Trespass Act (1 of 1871) s. 130—Illegal seizure of cattle—“Offence”—Power of District or specially authorized Magistrate to transfer such case—Subordinate Magistrate, power of, to try—Criminal Procedure Code (Act 5 of 1898) ss. 4 (o), 162, and Sch. II, last clause*—The illegal seizure or detention of cattle, referred to in s. 20 of the Cattle Trespass Act (I of 1871), is an “offence” under s. 4(o) of the Criminal Procedure Code of 1898, and is, by virtue of the last clause of Sch. II thereof, triable by any Magistrate; and though under s. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the s. 192, to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial, *Shama v. Lacchu Shekh*. I L. R. 23 Calc. 300 and *Raghu Singh v. Abdul Wahab* I. L. R. 23. Calc. 442, declared obsolete. *Mitra & Cox J. J.*

BUDHAN MAATO v. ISSUR SINGH 34 Calc. 996

———**S. 195.**—*Sanction to prosecute, when to be granted.* Sanction to prosecute is not usually granted unless there is a very reasonable chance of a conviction following. A sanction to prosecute under S. 195 of the Code of Criminal Procedure ought to be granted with great circumspection and care. If granted it places in the hands of the person obtaining it a very powerful weapon which the unscrupulous might use for purpose of oppression or blackmail. *Maclean & Holmwood J. J.*

KALI CHARAN v. BASUDEO NARAYAN, 12 C. W. N. 3.

———**S. 195**—*Information given to the police alleged to be false—Procedure—Notice*—Where a District Magistrate upon a report made by the police that information given to them charging a person with a specific crime is false, orders the person giving such information to be prose-

cuted under section 211 of the Indian Penal Code, such order is not an order to which section 195 (b) of the Code Criminal Procedure applies, neither is the order passed without jurisdiction if no previous notice to show cause is given to the accused. The more proper course, however, would be to let the informant bring his witnesses into Court, hear them out, and then, if the case was considered to be a false case, to pass an order that the informant should be tried under Section 211 of the Indian Penal Code. *Queen Empress v. Ganga Ram* (8 All., 38) *Emperor v. Tula* (Weekly Notes. 1907, p. 195) and *Haibat Khan v. King Emperor* 33 Calc., 31 distinguished. Knox J.

EMPEROR v. TABARAK ZAMAN KHAN, A. W. N., 1907, 288. = A. L. J. 740.

——— Ss. 195, 476.—*Sanction—Practice—granting.* *Held*, that Cr. P. Code does not contemplate a court or public servant giving sanction, where no application for it has been made; that, if a court or public servant thinks it necessary to initiate a prosecution, the proper course is to make a complaint, that, as far as Civil, Criminal and Revenue Courts, acting in the course of a judicial proceeding are concerned, the procedure to be followed is that prescribed in S. 476, and that in that case, the Magistrate, who takes cognizance of the offence, is not required to examine the complainant on oath.

Held also that granting sanction implies that some one wishes to prosecute, but cannot do so without the sanction prescribed by S. 195, because no court will take cognizance without it, that where it is the court or public servant that wishes to prosecute sanction is not required; and that all that is wanted is the complaint of that Court or public servant.

NGA PAW U v. KING EMPEROR, 13 Bur. L. R. 338.

S. 195 (6)—*Appeal lies to High Court against an appellate order revoking sanction granted by Court of First Instance.*—The right of appeal conferred by section 195 (6) of the Code of Criminal Procedure as read with sub-section (7) of the same section, is not restricted to a right of appeal to the Appellate Court to which the Court of First Instance is immediately subordinate. The revocation by the Appellate Court of a sanction given by the Court of First Instance, is a refusal of sanction within the meaning of sub-section (6) and an appeal lies therefrom to the High Court, as well as in cases where the sanction refused by the Court of First Instance is granted by the Appellate Court. *Palaniappa Chetti v. Annamalai Chetti* (27 Mad., 223), approved. An order revoking a sanction is a refusal of a sanction just as an order confirming a sanction is an order giving a sanction. (F. B.)

MUTHUSWAMI MUDALI v. VEENACHETTI 30 Mad., 382.

———**Ss. 195, 439**—*Sanction to prosecute—Revision—Powers of High Court.*—When an order granting or refusing sanction to prosecute under section 195 (1) (b) or (c) of the Code of Criminal Procedure has been dealt with under section 195 (6) of the Code by the Court to which appeals from the Court which passed the order ordinarily lie, the High Court has no power to interfere in revision with the order passed under section 195 (7). *Know J.*

KUSAL V. BADEI PRASAD, A. W. N., 1907, 283.

———**Ss. 203, 204, 253, 437.**—*Charter Act, S. 15—Presidency Magistrate, order of discharge made by—Power of the High Court to interfere—No exercise or illegal exercise of jurisdiction.* The High Court has no power under the Code of Criminal Procedure to interfere with an order of discharge made by a Presidency Magistrate. Its power of interference exists by virtue of S. 15 of the Charter Act, which gives it a limited jurisdiction. It can exercise such powers only in cases of non-exercise or illegal exercise of jurisdiction and cannot set aside an order of discharge made by a Presidency Magistrate merely on a consideration of the evidence in the case. *Dabi Bux v. Jutmal*, 33 Cal. 1282; *Sreemutty Brjangan v. Sreemutty*, 1 C. W. N. 49; and *Liladhar Lawji v. Keshavlal* unreported Cr. Rec. Case No. 461 of 1907, followed.

Mitra & Fletcher J. J.

KEDAR NATH V. KHETRA NATH, 6 C. L. J. 705.

———**S. 307**—*Jury not to be questioned as to reasons for verdict.*—When the jury return a verdict on the general issue of guilty or not guilty and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted, the Session Judge has no power, under section 307 of the Code of Criminal Procedure, to question the jury as to the reasons for their verdict. *Wallis & Miller J. J.*

EMPEROR V. SIRANDU 30 Mad., 469.

———**S. 435.**—*Revision Bombay District Municipal Act (Bom. Act III of 1901) S. 86—Recovery of Municipal claims—Notice of demand—Appeal—Magistrate.* Under S. 86 of the Bombay District Municipal Act, 1901, a Magistrate hearing an appeal of the kind mentioned in the section is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior Criminal Court, to which alone the revisional jurisdiction of the High Court applies under S. 435 of the Criminal Procedure Code, 1898.

Chandavarkar & Knight J. J.

IN RE DALSUKHRAM 9 Bom. L. R. 1347.

—————**Ss. 436, 439.**—*Commitment to the Court of Sessions ordered under S. 436—High Court's power to revise under S. 439—Preliminary inquiry into Sessions cases. Magistrate's power and duties in regard thereto.* It is not incompetent to a Magistrate holding a preliminary enquiry into Sessions case to examine the credibility of evidence adduced in the course of the enquiry. Such Magistrate should not commit the accused for trial in the Sessions Court if he be of opinion that notwithstanding direct evidence adduced against the accused, the prosecution case is improbable and the evidence is unreliable.

The High Court has full jurisdiction under S. 439, Cr. P. Code to revise a commitment order made under S. 436 on points of law as well as of facts.

Mitra & Fletcher J. J.

RASH BEHARI v. THE EMPEROR, 11 C. W. N. 117 = 6 C. L. J. 760.

—————**S. 439—Revision—Complaint under S. 476.** *Held*, that a complaint under S. 476 is an order within the meaning of Ss. 435 and 439 (read with S. 423) and can be set aside on revision.

In re *Bal Gangadhar Tilak*, 26 Bom. 785; *Queen-Empress v. Srinivasulu Naidu*, 21 Mad. 124, and in the matter of *Bhup Kunwar* 26 All. 249 followed. *Eranholi v. King Emperor*, 26 Mad. 98 questioned.

Held, also that ordinarily the High Court would not interfere with an order made under S. 476, that the principles by which it would be guided are those explained *Lachmanau Chetty v. King Emperor*, U B R. 1904-06 and in *Chaudhari Mahommed Izharul Huq v. Queen Empress*, 20 Cal. 849 and that in a case where there is manifest injustice or where the Court acting under S. 476 has not exercised its discretion in a proper way, the High Court should use its revisional powers.

NGA PAU U. v. KING EMPEROR, 13 Bur L. R. 338.

—————**S. 439, 476—Revision—Order legally passed by a Collector, but erroneously signed as by the District Magistrate.**—A Collector having heard an appeal in a mutation case passed an order against one of the parties to the case, apparently under section 476 of the Code of Criminal Procedure, but the order was headed and signed as having been passed by the District Magistrate. *Held* that as the order might legally have been made by the District Magistrate, it must be taken to be an order passed by the Collector, and the High Court had therefore no jurisdiction in revision to interfere with it.

Dillon J.

EMPEROR v. ABDUL RAOOF, A. W. N., 1907, 277 = 4. A. J. T. 701.

———**S. 476.**—*Bond genuineness of—Penal Code, S. 193, prosecution—Appellate Court, reversed by—Res judicata—Order under S. 476—Set aside—High Court's power to set aside order under S. 476, Criminal Procedure Code.* In a suit for recovery of a sum of money due on a registered bond, the Munsiff came to the conclusion that the bond was genuine, decreed the suit and directed the defendant under S. 476 of the Code of Criminal Procedure to be prosecuted under S. 193 of the I. P. Code. On appeal the Subordinate Judge held that the bond was not genuine and dismissed the suit. In the meantime and before the decision of the Subordinate Judge was pronounced, the proceedings in the Criminal Court had been taken, but when the Subordinate Judge pronounced his judgment, the case was still pending in the Criminal Court. A copy of the judgment of the Subordinate Judge was filed before the Criminal Court but was not given weight to and the defendant was convicted under S. 193 of the Indian Penal Code.

Held, that the judgment between the parties as regards the genuineness of the bond is *res judicata* in all subsequent proceedings between the parties. The High Court has jurisdiction to set aside the orders passed by the Criminal Court in a proceeding based on an order under S. 476 of the Code of Criminal Procedure, which ought to have been set aside as soon as the judgment of the Subordinate Judge was known.

Mitra & Fletcher J. J.

KUNULLAH v. THE EMPEROR, 6 C. L. J. 703=12 C. W. N. 1.

———**Ss. 517—Forfeiture—Sedition—Printing Press—Instrument sued for the commission of offence—Disposal of Property—Penal Code Ss. 62, 124 A.**—The first part of section 517 of the Criminal Procedure Code refers to cases of offences relating to property or documents, *e. g.*, where the Court directs, as in cases of theft or criminal misappropriation or offences of a similar description, that the property stolen or misappropriated be restored to its owner. The words "which has been used for the commission of any offence" refer to cases of the same nature, *i. e.*, to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition, inasmuch as the offence consists in the publication, and not the printing, the press being only a remote instrument. *Mittra & Fletcher J. J.*

ABINASH CHANDRA BHATTACHARJEE v. EMPEROR, 34 Calc. 986=6 C. L. J. 744.

———**S. 517—Appeal—Held** that as an appeal lay in the case, although it was only as to the extent or legality of the sentence, the Magistrate should not have allowed his order to be carried out until the period allowed for presenting such appeal had passed,

Held, also that the Magistrate should not have passed the order for delivery of the things to the complainant without giving the person from whom they had been taken an opportunity of being heard. *Held* further that the Magistrate's order in this case should not be interfered with, as the evidence disclosed a *Prima facie* case of the things having been obtained from the owner by means of an offence or fraud within the meaning of the second proviso to sec. 178 of the Contract Act. *For C. J.*

KING LONE v. MI KEY, 13 B. L. R. 273

——— **S. 517**—*Order directing delivery of property, in the absence of any Criminal proceeding or enquiry, without jurisdiction*—Where an order directing delivery of property is made by a Magistrate without any criminal proceeding before him or any other Magistrate, but merely on the application of the person in whose favour such order is made, such an order is entirely without jurisdiction. Section 517 of the Criminal Procedure Code cannot apply to the case. *Mitra & Fletcher J. J.*

SREEDAM v. W. J. O'GRADY 6 C. L. J. 707

——— **S. 528**—*Magistrates, subordination of*—*Transfer*—*Additional District Magistrate*—*Omission to state grounds*—Section 12 of the Criminal Procedure Code does not make an Additional District Magistrate subordinate to the District Magistrate, and the latter cannot exercise the powers under s. 528 in respect of such Magistrates. The Code does not define the relation between a District Magistrate and an Additional District Magistrate. It is incumbent on the Court making a transfer under s. 528 to record its reasons therefor, but the omission to do so is not a ground for setting aside the order where it has not prejudiced the accused. *Mitra & Casperz J. J.*

PRAKASH CHUNDER DUTT v. EMPEROR, 34 Calc. 918

——— **Secs. 537 (b) 195, 182**—*Want of sanction*—*Irregularity*—*Want of sanction under sec. 195, Cr. P. C., is no ground for setting aside a conviction after trial*—The words "subject to the provisions here in before contained in sec. 537" cannot be construed in such a way as to nullify the express provisions contained in the latter part of the section that no sentence passed by the Court of competent jurisdiction shall be reversed on appeal "for want of any sanction required by sec. 195"

Benson & Sankaran Iyer J. J.

PERUMAL v. NAYADI 17 M. L. J. 533

Gaming Act, (II (B. C.) of 1857); **secs. 3, 10**—*Game of chance, of skill*—*Ring, game*—*Chief element, skill*—*Certain amount of chance*—*No offence*—If a game is one of skill, it is not an offence under the gaming Act; if it is a game of mere chance, it is; where the chief element of a

game is one of skill, the game is not an offence, although there is an element of chance.

Mitra & Fletcher J. J.

HARI SINGH V. THE KING EMPEROR 6 C. L. J. 708

Penal Code s. 124—Sedition—“Swaraj”—Incitement to secure “Swaraj”—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code s. 108—The term “swaraj” does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is “home rule” under the Government. The incitement of the members of the public meeting to exert themselves to secure “swaraj” does not amount to an offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code.

Mitra & Fletcher J. J.

BENI BHUSHAN ROA V. EMPEROR 34 Calc. 991=6 C. L. J. 199

———**S. 211—False charge—Practice—Opportunity to be given to prove charge before prosecuting**—Where it is intended to prosecute any person under section 211 of the Indian Penal Code such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Queen-Empress v. Ganga Ram* 8 All, 38, and *Queen Empress v. Raghu Tiwari*, 15 All, 336 followed.

Dillon J.

EMPEROR V. TULA, 29 All, 587

———**S. 228, 500—Criminal Procedure Code sec. 976—Principle when Munsiff wants to show cause**—A notice was issued by a Munsiff calling upon the petitioner to show cause why he should not be criminally prosecuted for contempt of Court and defamation in respect of a petition in an execution matter, praying for time in order to enable the applicant to move the District Judge to transfer the case from the file of the said Munsiff to some other Court. Cause was shown and petitioner was committed to the Criminal Court for charges under sec. 228 and 500 of the I. P. Code.

Held, that the prosecution under s. 228 of the I. P. C. cannot stand. The Court in which an offence is committed under that section should try the offender then and there and pass order under that section. The Munsiff as a judicial officer cannot direct under sec. 476 of the Code the trial of the person who had committed an offence under s. 500 of the I. P. Code and ask the Magistrate to deal with his order directing the trial as a complaint.

Mitra & Fletcher J. J.

JOGENDRA V. SYAMA CHARAN 6 C. L. J. 713

———**Ss. 23, 231—Counterfeiting coin—Definition—Intention**—In order to constitute the offence defined by section 23 of the Indian

Penal Code, it is not necessary that the counterfeit coin should be made with the primary intention of its being passed as genuine: it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.

Banerji & Aikman J. J.

EMPEROR V. QADIR BAKHSI, A. W. N., 1907, 289.—4 A. L. J. 733.

—S. 302.—*Murder—Intention to cause death—Striking heavy blow.*

A man, who strikes at the back of another a violent blow with a weapon such as a *dashe* must be taken to know that he is doing an act imminently dangerous to the life of the person at whom he strikes and that a probable result of his act will be to cause that person's death: and that he must be held responsible for the natural consequences of his act and be taken to have intended them.

Held also that his knowledge or want of knowledge of the details of the injury he will probably cause, or of their results is immaterial; that he takes all the ordinary risks of his act and intends to do an act attended with risk to another human being's life; that an ordinary risk attendant on slashing with a *dashe* at the back of another human being is that the striker will cause the person struck injury sufficient in the ordinary course of nature to cause death; that the striker must, under the circumstances, be taken to have intended to cause such injury; and that, therefore, the accused's offence was *prima facie* that of murder *Fox & Moore J. J.*

NAG MAUNG V. KING EMPEROR, 13 Bur. L. R. 330.

—S. 411—*Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member*—Stolen property consisting of a considerable quantity of cloth weighing about five maunds was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held* that under the above circumstances the conviction of the managing member of the family under section 411 of the Indian Penal Code was a proper conviction. *Dillon J.*

EMPEROR V. BUDHLAL 29 All. 598

—S. 415—*What is—Essentials of cheating*—The complainant lent to her aunt the jewellery in question on the latter's statement that she wanted to wear it at a marriage, and that she would return it in a few days. There was nothing to show that the representation was fraudulent or a pretence and, as to the second representation, there was not sufficient evidence to show that, at the time the accused got the jewellery from the complainants. She had no intention of returning it, if it ever existed and if she did get it. *Fox. J.*

JUGGADAMA V. THE KING EMPEROR, 13 Bur. L. J. 268

DIGEST OF INDIAN (CRIMINAL) CASES

Bengal Excise and Licensing Act (VII E. C. of 1878) S. 75.—

Interpretation of—Confiscation in the owner's absence. The boat in which excisable articles are carried in contravention of the excise law should not be confiscated under the provisions of S. 75 of the Bengal Excise and Licensing Act, unless it is found that the owner of the boat was in some way implicated in the offence under the excise law.

Caspersz & Chitty J. J.

GOLAP SAHA v. THE EMPEROR, 12 C. W. N. 139.

Calcutta Municipal Act (III B. C. of 1899), Ss. 408, 419 and 575—Bustee improvement—Failure to make road as in standard plan of bustee—Bustee ceasing to be so. After huts have been removed from a bustee land, the land to be a bustee land and the provisions of S. 408 of the Calcutta Municipal Act can then no longer have any operation on the owner.

Mitra v. Fletcher J. J.

ABINASH E. THE CORPORATION, 12 C. W. N. 72.

Confession—Admissibility of a confession recorded by a Magistrate in a Native State—S. 164 of Criminal Procedure Code, 1898—I. E. Act, I of 1872, S. 26. Held, that a confession of an accused person duly recorded by a Magistrate in Native States Territory in proceedings under the provisions of the Code of Criminal Procedure is admissible in a trial in British India. *Queen Empress v Sunder Singh*, 12 All. 595 and *Patel Panachand v. Ahmedabad Municipal Committee*, 22 Bom. 235 followed.

Reid & Shah Din J. J.

BHOLA v. THE CROWN, 2 P. W. R. 92.

Criminal Procedure Code, s. 4 (r)—Act No. XVIII of 1879 (Legal practitioners Act), s. 9—Mukhtar—Authority of mukhtar to practise in Criminal Courts—A mukhtar is not entitled to practice generally and as of rights in Criminal Courts, but can act only when he has received the permission of the Court to act in any particular proceeding. **ANANT RAM.** In the matter of the petition of—**A. W. N.**, 1908, 11.

Knox, Bannerji & Richards J. J.

Sec. 138—Burial ground, order closing—jurisdiction—An order prohibiting the use of a grave yard is not such an order as can be made under sec. 133 of the Code of Criminal Procedure.

Mitra & Fletcher J. J.

SHEO SARAIN v. LAL MOHAMAD 12 C. W. N., 70

———**Sec. 164**—*Statement by a Magistrate recorded under—Right of accused to have copy before preliminary enquiry—Held, that an accused person under remand is not entitled, before the commencement of the preliminary enquiry against him, to copies of statements recorded by a Magistrate under sec. 164 of the Cr. P. Code.*

Benson & Wallis J. J.

MUTHIA SIVAMIOR v. PUBLIC PROSECUTOR 3 M. L. T. 14.

———**Ss. 195, 537**—*Misdescription of sanction—Order of articles—Irregularity cured—It must be presumed that all official acts have been duly performed and sec. 114 of the Evidence Act amply supplies omissions in the method of communication of the sanction to the prosecuting officer and the Magistrate, where the sanction as it originally stood contained a misdescription of the articles on which the prosecution was based and this rectified by a consequent sanction filed in course of the trial; held the petitioner was not prejudiced and the defect was cured by sec. 537 of the Criminal Procedure Code.* *Caspersz & Chitty J. J.*

APURBA v. EMPEROR 7 C. L. J. 49.

———**Sec. 196**—*Complaint—Sanction—Examination of complainant—Local Government—Presumption—Evidence Act sec. 114—Privilege—Proceedings of Court of justice—Printing press and news papers Act (XXV of 1877), sec. 7—Declaration by printer liability of printer—Sec. 198 of the Criminal Procedure Code requires that no case under s. 124 A. of the I. P. Code shall be taken cognizance of except upon complaint made with the authority of the Local Government. When the letter of authority did not specify the name of the accused but he was indicated from the first and his name was supplied at the commencement of the Police Court proceedings, held it was a sufficient compliance with the sanction.*

The person who signs the letter of authority is not the complainant and it is not necessary to take his examination under the law, The person who armed with the authority makes the application to the Court for the apprehension of the accused is the complainant and his examination is to be taken. A presidency Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing,

The authority under sec. 196 need not in the case of the case of 'Local Government' be signed personally by the Lieutenant Governor, it is enough if it is signed by one of his accredited and gazetted officers.

Caspersz & Chitty J.

APPURBA v. EMPEROR 7 C. L. J. 49

———**Ss. 203, 257, 437**—*Jurisdiction of District Magistrate under S. 437—Order directing that the accused should not be proceeded against and the process against him be withdrawn—Legality of District Magistrate's power to revise such order.* Where on the acquittal of a co-accused, the other accused against whom process of arrest had been issued, surrendered before the Deputy Magistrate who tried the co-accused and that officer passed an order directing that the accused should not be proceeded against and that the warrant and other processes issued against him be withdrawn.

Held, that this order of the Deputy Magistrate was bad in law and should be set aside. The proper course for him was to send notice to the complainant requiring him to proceed with the case and then dispose of the case according to law.

Held, further, that the District Magistrate had no jurisdiction under S. 437, Cr. P. C., to set aside the order and direct a retrial of the accused, as it was not an order dismissing a complaint or discharging the accused.

Mitra & Coe J. J.

PANDHU GHOSH v. KHOSDEL SARKAR, 12 C. W. N. 68.

———**Ss. 233, 239, 439 and 53**—*Joint trial of persons accused of rioting—Opposite factions—Held*, that where two parties are arrayed against each other in a riot, as they were in the present case, it cannot be truly predicated that the offence of rioting was committed by both the parties in the same transaction. Obviously the offence of rioting committed by each side forms a separate transaction, and Section 239 of the Criminal Procedure Code would, therefore, be entirely inapplicable.

Alay Deyankr P. L. R. (1907) No. 116.

———**Ss. 233 and 239**—*Charges Joinder of*—Four accused were committed to the Sessions Court on the charge of murdering N. The Sessions Judge recorded all the evidence for the prosecution and the statements of the accused, and then framed another charge against all four accused, of causing grievous hurt to one W. It was contended that the trial was bad for misjoinder of charges. It was found by the Sessions Judge that some persons unknown had killed N., and that some time after three of the accused came and tried to carry off his body, when W. tried to prevent them they caused him grievous hurt.

Held, that the contention was valid.

Clarke C. J. & Reid J.

NAWAB SINGH v. THE CROWN, P. L. R., 1907. No 117.

———**S. 256**—*Magistrate refusing to recall prosecution witnesses after charge on the ground of non-payment of necessary expenses by*

accused—Illegal Procedure. Under S. 256 of the Criminal Procedure Code it is the duty of a Magistrate, if the accused wishes, to recall the prosecution witnesses for further cross-examination. The accused cannot be deprived of his right of further cross-examination on the ground of non-payment of the necessary expenses by him. *Shah Din J.*

AMIN V. EMPEROR, 2 P. W. R. 91.

———*Ss. 337, 339 and 342—Evidence Act 1 of 1872, Section 118—Pardon by Local Government—Evidence—Accomplice, Statement made by—*One of the accused during the course of the trial was given pardon by Local Government, and was subsequently examined as a witness against the other accused. It was contended that the statement made by him was inadmissible in evidence on the ground that the Local Government had not power to grant pardon, the case not being exclusively triable by a Court of Session.

Held, that the statement was not admissible in evidence on the ground that the pardon was given after the commencement of the trial, and the ground urged had no force. *Reid & Lalchand J. J.*

ALLADAD V. THE KING—EMPEROR OF INDIA, P. L. R., 1907 No. 113.

———*Ss. 344—Adjournment of criminal case—Costs not payable by accused.*—The Criminal Courts have no power to order an accused person to pay costs of an adjournment of the case against him.

Clarke C. J. & Lalchand J.

BROWNE V. CHANDASINGH, P. L. R., 1907 No. 114

———*Ss. 346 and 532—Commitment made under S. 346, Cr. P. Code—De novo trial, if necessary.* Commitment made to the sessions by a Magistrate acting under the powers conferred by S. 346 Cr. P. C. is not illegal simply because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section.

To the case of an accused thus committed to the Court of Sessions, S. 532 of the Code of Criminal Procedure has no sort of application.

Caspersz & Chitty J. J.

KAMINI BAUBINI V. FAKIR CHAND, 12 C. W. N. 136.

———*S. 345.—Magistrate permitting compromise of the offence of rioting, S. 147, Penal Code—Offence not compoundable—Magistrate's permission ultra vires.* A Magistrate has no power to allow the non-compoundable offence of rioting to be compounded. *Clarke C.J. & Shah Din J.*

EMPEROR V. HIRA SINGH, 2 P. W. R. 93.

———*S. 350—De novo trial—Omission to examine a fresh pre-*

prosecution witnesses—Prejudice to the accused. Where after the prosecution witnesses were examined before a Magistrate, the case against the accused was made over to another Magistrate and a de novo trial was commenced before the latter in which the prosecution witnesses were not again examined but they were only cross-examined by the defence without any objection.

Held, that the trial was not in due compliance with the provisions of S. 350, Cr. P. C., and ought to be set aside. *Caspersz & Chetty J. J.*

SOBH NATH v. THE EMPEROR, 12 C. W. N. 138.

———**SECS. 435, 118—High Court—Revision—Findings of fact how far conclusive**—The High Court acting in revision, under sec. 435 of the Criminal Procedure Code, is bound to accept the finding of the lower Court unless there is any error of law or procedure vitiating that finding or unless there are any special circumstances apparent on the record to show that in arriving at its conclusion of fact the lower court misapprehended the evidence

EMPEROR v. NARAYAN 9 Bom. L. R. 1385.

———**Sec. 438—Revision—Second Class Magistrate—Second revision to Sessions Judge**—A Sessions Judge has no power to revise an order of a District Magistrate setting aside an order of a Third Class Magistrate refusing to sanction a prosecution under sec. 211 of the I. P. Code. The only court to which an appeal lies from an order of a third class Magistrate is the District Magistrate, and he alone can revise his orders.

Richards J.

RAM DEVI v. NAND LAL 4 A. L. J. 805

———**Ss. 439 and 537—Irregularity—Misjoinder—no prejudice** The revisional jurisdiction under Section 439 of the Criminal Procedure Code is by its terms entirely discretionary, and the Chief Court is not bound to interfere with an order of conviction passed at an illegal trial held in contravention of the provisions of Section 239 of the Criminal Procedure Code, when no prejudice is shown to have resulted by the illegal trial.

Clarke C. J. & Lalchand J.

ALADYA v. KING-EMPEROR, P. L. R., 1907. No. 116.

———**Ss. 488—Maintenance—Wife—Application for enforcement of order—Effect of decree for restitution of conjugal rights.**—When a decree for restitution of conjugal rights, subject to conditions is passed against a wife who has obtained an order for maintenance under Section 488 of the Criminal Procedure Code, and the wife after returning to the custody of her husband leaves it and applies for enforcement of the order for maintenance—

Held, that non-compliance with the conditions of the decree by the husband would revive the right of the wife to claim maintenance and to have the order enforced.

Reid J.

DEVIDITTA v. GANGADEVI P. L. R., 1907 No. 115

———**Sec. 476—Order by a criminal Court—Revision—**An order under sec. 476 of the Code of Criminal Procedure made by a Criminal Court is open to revision by the High Court. *Erankoli Aithan v. King Emperor* 26 Mad. 98 not followed.

Knox J.

MATA v. MAHABIR 4 A. L. J. 803

———**Sec. 565—I. P. C. secs. 457, 511—Held**, that where either the previous or subsequent conviction of an accused person is under sec. 511 I. P. C. for an attempt to commit an offence punishable for a term of three years or upwards under any sections specified in chapter XII or chapter XVII of the I. P. Code the Court trying the case has no power to proceed and pass an order against him under sec. 565 Cr. P. Code 1898.

Reid J.

HARNAM v. THE CROWN 2 P. W. R. 95

Excise Act (Punjab) 1896, Ss. 30, 31, 40 (c), Rule 38.—Foreign liquor—Importation of its small quantity for private consumption illegal. *Held*, that the importation of foreign liquor even for private consumption into the territory to which the Excise Act, applies and which is not allowed under it, is an offence punishable under S. 46 (c) of that Act.

Robertson J.

SHER SINGH v. THE CROWN, 2 P. W. R. 117

Gambling Act, (No. III of 1867) Ss. 5 and 6—Warrant for search of suspected houses—"Credible information"—Procedure—Endorsement of warrant by officer to whom it was issued—Warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general; there is, therefore, no objection to the officer to whom such a warrant is originally issued endorsing it to another officer, provided that the latter is an officer to whom such warrant could be legally issued in the first instance.

Knox J.

EMPEROR v. KASHINATH, A. W. N., 1908, 9.

———**Judgment of the Appellate Court—What it should contain—***Judgment of the first Court, whether may be read as supplementing judgment of the Appellate Court—Joint trial of several accused. The judgment of an Appellate Court dealing with the case of several accused*

who were convicted in a joint trial, must show on the face of it that the case of each accused has been taken into consideration and should state reasons as far as may be necessary to show that the Appellate Court has devoted judicial attention to the case of each accused.

An Appellate judgment must be quite independent and stand by itself. It ought not to be read in connection with or as supplementary to the judgment of the Court of first instance. *Caspersz & Chetty J. J.*

JAMAIT v. THE EMPEROR, 12 C. W. N. 134.

Opium Act (I of 1878) Sec. 9—Rule 16, Sec. 14—Opium. Possession of—Search—Illegality.—It was contended that a conviction under Section 9 of the Opium Act was illegal on the ground that the search which resulted in the discovery of the opium on the premises of the accused was illegal.

Held, that the contention had no force.—37 P. R. 1880 (Cr.) followed. *Clerk C. J. & Robertson J.*

CROWN v. NABU, P. L. R., 1907 No. 118.

Penal Code, Secs. 21 (cl. 10), 143 cl (5), 186—Unlawful Assembly—Use of Criminal force—Public servant—District Board.—The mere use of criminal force or show of criminal force by any person to take possession of any property is not sufficient to bring a case within cl. (5) sec. 141 I. P. C. unless criminal intent is proved against the person so using force or show of force.

Where a District Board decided to replace a bridge across a khal which was out of repair by means of a road with pipes passing underneath for the flow of water, and the owners of the bed of the khal objected to the laying of the pipes on the ground that it would obstruct the flow of water and removed the pipes placed there by the District Board.

Held—That the conviction of the owners under secs. 143 and 186, I. P. C. was bad. *Caspersz & Chitty J. J.*

ADDAITA v. KALIDAS 12 C. W, W. 96

———**S. 124 A—Sedition—Republication—Privilege**—A news paper was prosecuted for sedition, One article was put in at the trial. The prosecution intended to rely upon other articles also in support of their case and had them translated and the translations supplied to the accused in that case. They were, however, never brought upon the record in that case. Where these translations were reprinted by another newspaper *held*, that the republication was not of any proceeding of a Court of Justice and not therefore privileged. In a case like this, the Court shall look into the state of the country and judge whether the republication was *bona fide* or not.

The person who subscribes to the declaration under the printing processes and newspapers Act must be presumed under sec. 7 to be cognizant of all that he was printing and publishing and in the absence of any evidence to the contrary, his liability in the matter cannot be gain said.

Caspersz & Chitty J,

APPURBA v. EMPEROR 7 C. L. J. 49

———**Ss. 192, 193**—*Statement made to police—admissibility in evidence—Sanction to prosecute for perjury—Criminal Procedure Code, S. 476—Revision.* Statements made to police officers and recorded by them in the diaries cannot be used in evidence except for the sole purpose of contradicting the police officer. *Queen Empress v. Mannu* 19 All 390, followed. Where a person denied having made a particular statement to a police officer in whose diary it was to be found.

Held that prosecution for perjury against that person could not successfully be maintained.

Held further that the High Court has power to interfere in revision in a case where the Magistrate sanctions a prosecution under the above circumstances, even if the order was passed under S. 476, Cr. P. Code.

Knox J.

HUHAMMAD v. KING EMPEROR, 4 A. L. J. 811.

———**Sec. 287**—*Negligence—Machinery—Working of*—When an owner of machinery employs a competent man to work it and leaves him unfettered, the owner cannot be held criminally responsible for any accident due to the errors of his employee.

Held, that it was not proved that the machinery was worked in this case in an unsafe manner.

Clark C. J. & Robertson J.

KIENG-EMPEROR v. KANHAYALAL, P. L. R., No. 112,

———**S. 302**—*Murder—Evidence opposed to probabilities*—Where a girl of 15 and a boy of 13 years deposed to having seen the accused throw the deceased down more than once and did not state the fact to persons they would have ordinarily reported to and further withheld the fact from the police and the magistray for along time after the incident. *Held* acquitting the accused that the matter was not under the circumstances free from no doubt.

Benson & Miller J. J.

ERIKALA SUBBADU 1 Cr. L. R. 392

———**Sec. 379**—*Theft of cash—stolen money founded secreted and separated from other cash—Its evidenciary value*—Where the accused being the only inmate of the complainants compartment was found to have secreted and separated exactly the lost amount in his trowser pocket. *Held* it was a strong circumstantial evidence showing the guilt of the accused.

Boddam J.

THE PUBLIC PROSECUTOR v. SADDAYAN 1 Cr. L. R. 394

———**Secs. 403, 409**—*Conviction for the minor offence—Claim to be tried for major offence—Conviction not invalid*—Where a public servant was convicted by a 2nd class Magistrate on a charge of Cr. Misappropriation but the evidence seemed to disclose to the Appellate Court that Criminal Breach of Trust by a public servant had been committed. *Held*, that the conviction for the minor offence was not invalid and that it was not expedient for requiring prosecution and trial in respect of the graver charge. Case reported in 2 Weirs (Cr. Rulings) p. 482 followed.

Subrahmaniam Aiyar J.

NARAYAN NAICKEN V. THE THE TAHSILDAR OF CONGEEVARAM 1 Cr. L. RE 391.

———**Sec. 411**—*Jewels stolen in dacoity—accused in possession—Identification by owner—Presumption—Onus—Indian Evidence Act, sec. 114*—Where some articles of jewellery were stolen in a dacoity, and were found in possession of the accused three weeks after.

Held, that the identification of the jewels by the owner and his wife and daughter who were in the habit of wearing them was insufficient, and unless the accused could show he obtained possession of the property the natural inference from all these facts (warranted by sec. 114 of the Evidence Act) was that the accused dishonestly received the same knowing or having reason to believe that they were stolen.

Benson & Wallis J. J.

SEN RAYA V. THE PUBLIC PROSECUTOR 3 M. L. T. 30.

———**Sec. 494**—*Bigamy—Marriage of a Christian with a Hindu woman according to Hindu rites while Christian wife was living*—Where a native Christian having a christian wife living married a Hindu woman according to Hindu rites without renouncing his religion. *Held*, upholding the conviction that the second marriage of the accused must be treated in law as an adulterous union and therefore void within the terms of the section by reason of its taking place during the life time of the first wife. *Government of Bombay v. Ganga* 4 Bom. 330 *In re Millard* 10 Mad. 218, *In re Ramkumari* 28 Cal. 264 referred to. *Benson & Wallis J. J.*

JOSALI AMMAL V. LAZAR 1 Cr. L. Rep. 338, 2 M. L. T. 345.

———**Sec. 499**—*Evidence Act, sections 105 and 132—Defamation—Witness—How far witness protected when giving evidence*—If a witness whilst giving evidence makes a statement concerning any person which amount to defamation, he may be prosecuted under section 499 of the Indian Penal Code in respect of such statement, and it lies upon him

to show that the statement which he has made falls within one or other of the exceptions to section 499 of the Code, or that he is protected from prosecution by the proviso to section 132 of the Indian Evidence Act,

So held by *Knox*, Acting C. J. and *Aikman J.*, *Richarde J. dissente.*

Per Richards J.—A prosecution for defamation under section 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence, even if such statement may be not relevant to the matter under inquiry. *Baboo Gunesh Dutt Singh v. Mugneeram Chowdhry*, 11 B. L. R. 321 followed.

EMPEROR V. GANGA PRASAD 29 All., 685.

Practice—The testimony of persons who have been compelled to pay illegal gratification has much greater probative force than that of ordinary accomplices. *Deonandan v. Empress* 10 C. W. N. 669=33 Calc. 649 (1906) followed.

Mitra & Holmwood J. J.

THE DEPUTY L. R. V. UPENDRA KUMAR 12 C, W. N. 140

———*Irregularity—Waiver by accused—Effect—Transfer of case—De novo trial—Criminal Procedure Code sec. 350.* Except when the law expressly permits waiver the rights of an accused should not be held to be lost by his consent to a procedure or to admission of evidence which the law does not authorise.

The prisoner on his trial can consent to nothing. It is the duty of Magistrates and all Criminal Courts to follow the procedure prescribed by law, and the consent of the accused cannot be invoked against any irregularity in procedure.

Where after several witnesses were examined the case was transferred to another Magistrate the latter acted with irregularity in convicting the accused on evidence partly recorded by the former Magistrate, sec. 350 of the Criminal Procedure Code not being applicable to such a case.

Where the accused did not formally plead guilty the fact that he threw himself on the mercy of the Court should not prejudice him, *Attorney General of New South Wales v. Bertrand* 36 L. J. P. C. 51, L. R. I, P. C. 520, (1867) *The Queen v. Bhola Nath* 2 Calc. 23 (1876), *The Queen v. Khan Mahomed* 24 W. R. Cr. R. 53 (1875) followed. *Purniessur v. Sorop Ahikaru* 13 W. K. Cr. 40 (1870) not followed.

Mitra & Holmwood J. J.

THE DEPUTY L. R. V. UPENDRA 12 C. W. N. 140.

DIGEST OF INDIAN (CRIMINAL) CASES

Bombay City Police Act (Bombay Act IV of 1902), sec. 120.—

"Otherwise" Interpretation—Soliciting for the purpose of prostitution.— The words "or otherwise in s. 120 Cl. (a) of the Bom. City Police Act 1902, must be construed as having a limited signification followed as they do words of a limited description. They mean "in a manner similar to that of words or gestures." Therefore, merely sitting at the window without any act done of the nature indicated in the section, is not an offence.

Chandavarkar Knight J. J.

EMPEROR v. NASHMIRBAI 10 Bom. L R. 92.

Criminal Procedure Code, Ss. 110, 117—General repute—Evidence of—Evidence of person who are not neighbours—Evidence testing of, in cases under Chap. VIII. When a proceeding under S. 110 is drawn up against a person on a police report and an order is made by the Magistrate under S. 112 requiring the person to show cause it is not necessary to give a list of witnesses in support of the proceeding either in the report or in the order under S. 112. In dealing with cases under Chapter 8 of the Cr. P. Code, Magistrate ought especially where no previous conviction is proved to take great care to test the evidence for the prosecution. Wherein consequence of a series of dacoities having taken place in certain villages, a proceeding under S. 110, Cr. P Code is instituted against a person for being a robber by habit the evidence of general reputation coming from the people of the villages where dacoities had taken place is certainly to be treated as evidence of general repute as required by S. 117 Cr. P. Code, although that person did not live amidst those people. *Ieri Prasad* 23 Cal. 621 distinguished. *Rampini & Sharfudin J.J.*

CHINTAMAN SING, 12 C. W. N. 301.

———**Ss 12 and 118—Failure to record an order under s. 118, effect of—Irregularity of procedure—Held,** that provisions of s. 112 of the Code of Criminal Procedure are merely directory the; failure to record an order under the section should be treated as a mere irregularity.

Greevan J.

PRAGI v. KING-EMPEROR 10 O. C. 365.

———**S. 145—Omission of Magistrate to state grounds for passing order is an irregularity and does not render the proceedings void, if no**

prejudice caused there by—The omission of a Magistrate in his order initiating a proceeding under s. 145 of the Code of Criminal Procedure, to state the ground on which he is satisfied that there was a dispute likely to cause a breach of the peace, is an irregularity and will not when the party is not prejudiced in the conduct of the inquiry by such omission, render the proceedings of the Magistrate void. Want of notice to one party in possession can not be set up by another party who had notice and who appeared in the proceedings.

IN THE MATTER OF CHINNAPPUDAYAN 30 Mad., 548.

———s. 145—*Duty of taking evidence—whether first class Magistrate can refer to another subordinate Magistrate.*—S. 145 (4) of the Cr. P. Code requires that the Magistrate taking proceedings under that section should himself receive the evidence produced by the parties; if a First Class Magistrate refer it to a subordinate Magistrate to take evidence and report, and then passes orders thereon the order is without jurisdiction.

Wallis J.

MASON v. SENI GOMDAN 3 M. L. T 108.

———s 165,—*Sub-section 137—Indian Penal Code (Act XLV of 1860) secs. 99, 147—Public servant acting without authority.*—If a constable goes for search without any written authority he does not under sec. 165, sub-section (3) of the Criminal Procedure Code lawfully exercise the power of a public servant. To such a case, sec. 99 of the I. P. Code has no application; that section contemplates certain acts against which there is no right of private defence.

The essence of sec. 147 of the I. P. Code is that the public servant should exercise the power lawfully.

Caspercz & Chitty J. J.

IDU MANDAL v. THE EMPEROR. 6 C. L. J. 753.

———Ss. 112, 110—*Transfer of a case under S. 110—Power of the District Magistrate to direct.* A case under S. 110, Cr. P. Code can be transferred by a District Magistrate as he is competent under S. 192 Cr. P. Code to transfer any case cognizable by a Criminal Court and his power of transfer is not restricted to criminal cases only. When a Magistrate having no power to transfer a case under S. 110, Cr. P. Code, transfers the case erroneously and in good faith to another Magistrate, the proceeding before the latter Magistrate will not be void as such transfer would only amount to an irregularity which would be covered by the provisions of S. 529 (f), Cr P Code.

Rampini & Sharfudin J. J.

CHINTAMANSING 12 C. W. N. 299.

———**S. 195**—*Penal Code Ss. 183, 186, and 355, 323—Offences under in the same transaction—whether sanction necessary if complaint is only under Ss. 355 and 323, I. P. Code.* Where an offence punishable under S. 183 or S. 186 was committed and in committing it, offences under Ss. 355 and 323 were also committed. *Held*, that the complainant can institute proceedings under Ss. 355, 323 without obtaining any sanction, which would be required in the case of offences under Ss. 183, 186, I. P. Code.
Miller J.

KRISHNA PILLAI v. KRISHNA, 3 M. L. T. 113.

———**S. 195**—*Sanction to prosecute—Jurisdiction to grant or revoke sanction.* Application was made under S. 195 of the Code of Criminal Procedure to a Magistrate of the 3rd class, who tried the original case, for sanction to prosecute the complainant. This application was refused. A further application was then made to the District Magistrate, who granted sanction. *Held*, that the Sessions Judge had no power to set aside the order of the District Magistrate granting sanction.

Richards J.

RAM DENI v. NAND LAL RAI, A. W. N., 1901, 28.

———**Ss. 195, 476**—*Sanction to prosecute—Refusal by Subordinate Judge—District Judge can direct prosecution under S. 476, on appeal—Procedure.* Where a Subordinate Judge refuses to grant a sanction under S. 195 of the Criminal Procedure Code, a District Judge has, on appeal, jurisdiction to pass an order under S. 476 of the Code, but in doing so, he should himself proceed according to S. 195, Cl. (b), read with S. 476 of the Code. *Begusingh v. Emperor*, 34 Cal. 551, F. B., dissented from.
Chandavarkar & Knight J. J.

In re **LAKSHMIDAS LALJI**, 10 Bom. L. R. 28.

———**S. 202**—*Dismissal of complaint—Further inquiry without notice to accused—Necessity of notice.* Where a District Magistrate ordered further inquiry in a case of dismissal of a complaint by a Magistrate under S. 202, Cr. P. Code. *Held* that no notice was necessary, the proceedings having reached no further stage than they did.

Per Knox J.—It is impossible to lay down a general rule that in every case the Magistrate exercises a wrong discretion, if he orders further inquiry without notice being sent to the accused. The safer and more convenient course is to send such notice.
Knox J.

MUHAMMAD MUTAKI v. KING EMPEROR, 5 A. L. J. 74.

—————**Ss. 221, 222, 225, 534**—*Penal Code, Ss. 147, 332*—*Separate sentences under them not allowed—Frame and joinder of charges—Omission to state time, place and common object when fatal.* *Held*, that in a trial for rioting the charge is bound to state the common object of the assembly, and if it does not, the omission is not fatal to the conviction, if the accused have in no way been prejudiced; but where as in this case it is shown that omission to state in the charge of rioting, the time and place and the common object has prejudiced the accused in their defence the conviction is liable to be set aside.

Held also that when an offence forms an ingredient of the offence of rioting the rioters cannot be punished both for rioting and the other offence. P. R. (Criminal) No. 4 of 1901, F. B, followed.

Clarke C. J. & Chatterji J.

GOWARDHAN DAS v. EMPEROR, 2 P. W. R. 106.

—————**Ss. 233, 537**—*Joinder of two offences in one charge, legality—Differences—Trial, separate.* A joinder in one charge of two offences committed on one and the same date is an illegality which vitiates the trial and is not covered by S. 537 of the Cr. P. Code. *John v. King Emperor*, 2 C. L. J. 618 and *Gul Mahomed v. Cheharu*, 10 C. W. N. 53 followed.

That there should be a separate charge for each distinct offence, is provided by S. 233 of the Criminal P. Code.

Where two persons, are accused of different offences, committed in different transaction relating to different persons, they should be tried separately.

Quare—Whether the rule laid down in *Subramania Aiyar v. King Emperor*, 25 Mad. 61; L. R. 28 I. A. 257 is not carried too far by the decision in cases of *Gul Mahomad v. Chenaru*, 10 C. W. N. 53 and *Johan Subarma v. King Emperor*, 2 C. L. J. 618.

Caspersz & Chitty J. J.

TILAKDARI v. THE EMPEROR, 6 C. L. J. 757.

—————**S. 256**—*Whether applies to cases under S. 110 Cr. P. Code.* S. 256 of the Cr. P. Code has no application to a case under S. 210, Cr. P. Code and a person called upon to show cause under S. 110 has no right to further cross examine the prosecution witnesses under S. 256 Cr. P. Code.

Rampini & Sharfuddin J. J.

CHINTAMAN SINGH v. EMPEROR, 12 C. W. N. 299

———**Ss 287, 288 and 436**—“*Committing Magistrate*”—“*Order him to be committed*”—*Meaning of.* The words “Order him to be committed” in S. 436 of the Code of Criminal Procedure do not mean more than “pass an order for his committal” and enable the District Magistrate himself, to make a committal or to direct a Subordinate Magistrate to make a committal. *Queen Empress v. Krishna*, 20 Bom. 319 and *Queen Empress v. Surendra Nath*, 28 Cal. 397 approved.

The phrase “committing magistrate” in Ss. 287 and 288, Cr. P. Code is merely a comprehensive way of referring to the magistrate or magistrates who held the preliminary inquiry on which the trial was made.

Benson & Boddam J. J.

The Sessions Judge Mangalore v. Malinja, 3 M. L. T., 25.

———**Ss. 394, 395**—*Sentence of whipping—Offender not in a fit state of health—Whipping partly carried out—Imprisonment in lieu of balance—Legality.* K was found guilty of theft and sentenced by a District Magistrate to receive 20 stripes. The medical officer certified that he was unfit to receive 20 stripes but was fit to receive 6 stripes. This was inflicted and in lieu of the balance of 14 stripes, the District Magistrate sentenced the prisoner under S. 395 of the Criminal Procedure Code to 3 month’s rigorous imprisonment.

Held that there is no provision of law authorising a medical officer to give such a certificate as was given in this case before the whipping commenced, that it could not be considered to have been granted either under S. 394, Cl. (1) or Cl. (2) Cr. P. Code and as such S. 395 did not apply.

The sentence of imprisonment was therefore set aside, and the prisoner was discharged.

Benson & Sankaram Nair J. J.

MAHOMED KUTTI v. THE PUBLIC PROSECUTOR, 3 M. L. T. 31.

———**S. 476**—*Time for making order under the section.* Per *Chief Justice* and *Wallis J.* (*Miller J.* dissentiente). An order under S. 476, Cr. P. Code should be made either at the close of the proceeding or so shortly thereafter that it may be reasonably said that the order is part of the proceeding.

RAHIMTULLA SAHIR, 17 M. L. J. 584.

———**Ss. 476, 439**—*Revision—Powers of High Court—Practice.* Although the High Court has power in revision to interfere with an order passed under section 476 of the Code of Criminal Procedure, yet where such an order is passed advisedly, and the Magistrate shows in his judg-

ment that he has acted with circumspection and mature deliberation, the order should not be interfered with. *Eranholi Athan v. King Emperor* 26 Mad. 98 dissented from. *Knox J.*

NAUBAT SINGH v. NARAIN SINGH, A. W. N., 1908, 27.

——— **S. 517—Conviction for sedition—Confiscation of the press—Illegal**—In the case of conviction under s. 124 (A.) P. Code the press used for preventing a seditious article cannot be confiscated under s. 517 Cr. P. Code. *Clarke C. J. & Chatterji J.*

PINDIDAS v. K. EMPEROR 2 P. W. R. 97

——— **S. 537—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure**—Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient under section 537 of the Criminal Procedure Code, to upset the finding and sentence unless it has in fact occasioned "a failure of justice," that is, unless it has fairly affected the accused's defence on the merits. *Chandavarkar & Heaton J. J.*

EMPEROR v. JIVANJI 31 Bom. 611.

——— **S. 540—Witness called by court—Extent of cross examination**—When a witness is called by the court under s. 540 Cr. P. Code the cross examination by the parties, cannot under the law, be restricted to the points on which he has been examined by the Court.

CHINTAMAN SINGH, 12 C. W. N. 130.

Emigration Act, (21 of 1883 Amended by Act 20 of 1902),—
Ss. 6, 110, 111—Magistrate 1st Class in S. 111 includes Presidency Magistrate—Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered in to on his behalf by his servant in violation of sec. 111—Protector of Emigrants has power to impose reasonable terms before he can issue permission applied for—The term "Magistrate of the First Class" used in section 111 of the Indian Emigration Act, 1883 means a Magistrate appointed to exercise the highest Magisterial powers ordinarily prescribed by the Criminal Procedure Code within his jurisdiction and includes a Presidency Magistrate.

Sub-section (1) of section 111 of the Indian Emigration Act hits at not merely entering into an agreement but also at any attempt to enter into it. An attempt consists in some external act which shows that progress is made in the direction of it or towards maturing and effecting it, that is something tangible and ostensible of which the law can take hold, which can be alleged and proved.

Where penal statute has been infringed by servants and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject-matter and object.

Sub section (1) of section 111 of the India Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facere videtur*. The word "whoever" in the clause means whoever either by himself or through his agent. In other words, the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract.

The coupling of the word "conditions" with the word "terms" in section 107 of the Act shows the intention of the Legislature to be that the officer authorized to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself or being extraneous to it relate to the execution or other considerations which have to be taken into account in order to protect the interests of the Native of India departing out of it by sea.

Section 29 of the Indian Emigration Act, 1883, makes it compulsory that the execution of the agreement therein referred to should be in the presence of the Protector. In section 108 of the Act the power conferred on the Local Government, who have delegated their power to the Protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in section 107 shall be executed or not in its presence that is, in the presence of the Protector acting as its delegated authority. The two sections being thus distinguishable, the language of one cannot be invoked to aid the construc-

tion of the other, especially where the language of each is plain.

Chandavarkar & Heaton J. J.

EMPEROR V. JEEVANJI 31 Bom. 611.

Factories Act (14 of 1881). secs. 14, 15, 17—Factory—Occupier—Notice—Under s. 14, effect of—liability of the occupier for breach of the Act—successor of the occupier—The substance and import of sec. 14 of the Indian Factories Act, 1881, are that the occupier of a factory shall send the notice prescribed, within one month after his occupation has commenced. If any individual sends such a notice, that is evidence of a representation by him that he is the occupier; but there is nothing in the Act which makes it necessarily conclusive evidence. The Court may treat the evidence of the notice as sufficient to discharge the onus of proof lying on the prosecution at the outset and to shift the burden on to the person who gave the notice. The Court is not bound to treat as such. Whether it should so treat it or not must depend on the circumstances of each case.

There is nothing in the Act to make the mere successor in office of a person who has given notice under section 14 an occupier himself unless he is legally in occupation. What is an occupation is a question of fact in each case, to be determined with reference to some well-known principles of law.

The question who is the occupier of the factory must depend among others upon these considerations, namely, who alone has the right of using the factory for the purposes for which it is constructed and worked; who has the right of regulating and controlling it, whose is the predominant possession of general superintendence over it.

Chandavarkar & Knight J. J.

EMPEROR V. TAYLOR 10 Bom. L. R. 38

Gambling Act, (III of 1867)—Search warrant issued to Police Officer by Magistrate—Such Police Officer endorsing it for execution to another Police Officer—Legality of execution of search by the Police Officer—Search warrants issued under Act No. III of 1867 (Gambling Act) are governed by those provisions of the Code of Criminal Procedure which provide for the issue of the warrants in general. Consequently, a search warrant may be endorsed by a Police Officer to whom it was originally directed to another who is not of a rank below that authorised under the Act to enter and search.

Know J.

KASHI NATH V. KING EMPEROR 5 A. L. J. 59,

Madras Town Nuisance Act, (3 of 1889), ss. 31 cl. (10)—
Gambling on pial of private house—Gambling on the pial of a private house is not an offence committed in any public street road or throughfare or place of public resort within the meaning of s. 3, cl. (10) of Act 3 of 1889.
S. Nair J.

IN RE CHENNIAL 3 M. L. T. 137

Penal Code Secs. 75, 114—*Previous conviction—Abetment—Subsequent offence—Enhancement of sentence*—A previous conviction for an offence, cannot be taken into consideration at subsequent conviction for abetment for the purposes of enhancing punishment under section 75 of the Indian Penal Code.

The effect of sec. 114 of the I. P. Code is that if a man is present at a commission of an offence, he is to be deemed to have committed it, not that he has committed it.
Russell J.

EMPEROR V. KASHIA ANTOO 10 Bom. L. R. 26

Sections 124 A, and 139—*Intention—Attempt—Confiscation of press not allowed—Presumption of Hindu family being joint.* Where P in the issue of "India (a Vernacular Weekly Newspaper) of 24th April 1907, published an article headed "The British Government Native Forces, Bande Matram" and which purported to be a letter from a sympathiser of native soldiers to their address and calculated to seduce soldiers of the Indian army from their allegiance and their duty to His Majesty the King Emperor of India and O abetted the same by printing the article at his press.

Held, that the accused were rightly convicted under section 124 A and 131 of the I. P. Code, and that publishing broadcast some 3000 copies of the letter which was bound to reach them is clearly an act amounting to an attempt, and,

Held, also that the intention mentioned in the above sections is to be deduced from the terms of the seditious article, editorial comments, and previous writing on the subject.

Held further that in the case of conviction under the above sections a press used for printing seditious article cannot be confiscated under sec. 517 of the Code of Criminal Procedure,

Calcutta Weekly Notes Vol. VIII p. 882 and Vol XIX 1046, and P. L. R. No. 4 of 1904 followed. *William Clarke C. J. & Chatterji J.*

PINDIDAS V. THE KING EMPEROR 2 P. W. R. 1907.

———**S. 441—Trespass—Unlawful assembly—Owner of land taking away crops placed by a thief**—A thief who places crops on part of a common thrashing floor does not by that act obtain legal possession of the land so used by him; and an entry by any body to deprive him of such crops does not amount in law to a trespass; where in such a case the owner of the crop assisted by a number of persons entered the thrashing floor and took away the crop. *Held*, that they did not constitute an unlawful assembly. In this case is discussed the nature and extent of the right of private defence for the recovery of stolen goods.

JARHA CHAMAR v. SIRIT RAM 3 Nag. L. R. 177.

———**S. 494—Native Christian having Christian wife living and marrying Hindu woman guilty of bigamy under the section**—A Native Christian, who, having a Christian wife living, marries a Hindu woman according to Hindu rites without renouncing his religion, is guilty of an offence under section 494, Indian Penal Code. *In re Millard*, (L. L. R., 10 Mad., 218), followed in principle. *In re Ram Kumari* (18 Calc., 264), followed in principle. *Proceedings dated 8th November 1866*, (3 M. H. C. R., App. VII), not followed. *Obiter*: It will make no difference even if he had renounced the Christian religion before contracting the second marriage.

Benson & Wallis J. J.

EMPEROR v. LAZAR 30 Mad, 550.

Practice—Enhancement of sentence—Conviction treated as conclusive—It has been the invariable practice of the Bombay High Court, in cases that come up before it for enhancement of sentence, to accept the conviction as conclusive and to consider the enhancement of sentence on that basis.

Chandavarkar & Knight J. J.

EMPEROR v. CHINTO 10 Bom. L. R. 93

———**Conviction based on deposition of accused—illegal—Held that a conviction based on the deposition of the accused taken on solemn affirmation can not be upheld.**

S. Nair J.

AUTHANI v. EMPEROR 3 M. L. T. 150

DIGEST OF INDIAN (CRIMINAL) CASES

Abkari Act (Bom. Act V of 1878) Sec. 53—*Principle to be applied to cases under the Act Mens rea-Master's Liability for Servant's defaults*—The principle with regard to the Abkari Act, 1878, is that licenses to keep shops are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of license would be defeated if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the shop was conducted.

Mens rea is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest under a penalty. This principle is substantially adopted in S. 53 of the Abkari Act with this exception that it is open to the license holder, according to the section, to prove facts to show that he is not liable for his servant's defaults or acts.

Chandavarkar & Knight J. J.

EMPEROR V. WAMAN. 10 Bom. L. R. 172.

Arms Act (11 of 1878) Ss. 14, 19 (f)—*Temporary possession of a gun without license*. The temporary possession of a gun is not the possession contemplated by S. 14 of the Arms Act. The mere possession of a gun is not punishable under S. 19 (f); it is possession contrary to the provisions of S. 14 that is punishable.

Rampini & Sharfudin J. J.

PRABHAT CHANDRA V. EMP, 7 Cal. L. J. 242.

Calcutta Municipal Act (3 of 1899) Ss. 372, 383, 449—*Corrugated iron shed if a building - Notice when a condition precedent*. A corrugated iron shed is a building as defined in the Calcutta Municipal Act. The issue of a notice under S. 383 is not a condition precedent to a proceeding under S. 449 (1) of the Act for the demolition of a building erected without sanction in contravention of the provision of S. 372.

Rampini & Sharfudin J. J.

SUBARMOYE V. CALCUTTA CORPORATION, 7 C. L. J. 243.

Criminal Procedure Code, Secs 112 and 122—*Surety—Ability to influence the bad character—Mere solvency not sufficient*. A surety executing a bond in terms of Form XI, Schedule V of the Criminal Procedure Code, undertakes thereby to guarantee the good conduct of his principal, and his fitness to stand as surety must be judged chiefly by his ability to

to perform his contract of guarantee and to enforce the good behaviour of principal. This is also the intention of the provisions in Section 112 Criminal Procedure Code, empowering the Magistrate to specify the "character and class" of the sureties required. The Magistrate has also to consider the question of the ability of surety to influence the conduct of the bad character, as relevant to his fitness. But the Magistrate is not to exercise his power arbitrarily nor to impose impossible restrictions as the provisions of Chapter VIII are merely preventive and not penal. *Pratt & Crouch J. J.*

IMPERATOR v. MANU wd MAHOMMED PAROR, 1 Sind L. R. 46.

———Ss. 145, 435—*Revision—Order as to moveables* The High Court would interfere in revision with an order under S. 145, Cr. P. Code made without jurisdiction, e. g. as to moveables. *Hartnoll J.*

VYRANAL v. MEYAPA, 13 Bur. L. R. 372.

———Ss. 145, 439—*Revision—Criminal Cases—Dispute relating to immoveable property.* The Chief Court is competent to revise orders passed in proceedings held under S. 145 of the Cr. P. Code when the procedure prescribed therefor is not strictly followed.

The Chief Court set aside the proceedings where it appeared that a copy of the initiatory order was neither served on the parties nor affixed at or near the subject of dispute and all the parties interested in the dispute were not heard. *Rattigan J.*

ABDULLA KHAN v. GUNDA, 9 P. L. R. No. 71.

———S. 164—*Evidence Act, S. 26—Confession recorded in native territory.* A confession duly recorded by a Magistrate in a native territory in proceedings under the provisions of the Code of Criminal Procedure is admissible in a trial in British India. *Reid & Shah Din J. J.*

BEOLA v. THE CROWN, 9 P. L. R. 115.

———Ss. 190 (1), 191—*Applicability to appeal Court.* A Magistrate passing orders for the issue of summons against the accused in a criminal case placed before him by an order of the Collector to the effect that the case should be put up before the Magistrate for the issue of necessary orders takes cognizance under S. 190 (1) (c). A Subordinate Magistrate who took cognizance of a case under S. 190 (1) (c) could not after becoming District Magistrate hear an appeal from a conviction in the case which was tried by another Subordinate Magistrate without following the procedure laid down by S. 191, Cr. P. C., an appeal being part of the trial for an offence. *Rampini & Sharfudin J. J.*

BANSI LAL v. K. EMP, 12 C. W. N. 438.

———S. 192—*Transfer of case to Sub-Magistrate—Dismissal of*

case against one accused—Summons against others—Jurisdiction. Where a complaint was lodged against several accused persons and the Magistrate after examining the complainant issued summons against one of the accused only and transferred the case for trial to a Subordinate Magistrate.

Held that the whole case of the complainant was transferred and the Sub-Magistrate could discharge the accused before him and order summons to issue against others against whom the complaint seems to him to have been well founded.

Mookerjee & Coxe J. J.

AZIM SHEIKH. 7 C. L. J. 249.

—————**Secs. 195, 337—***I. P. Code secs. 195, 211—Conviction for offences under—Want of sanction—Whether material irregularity.* Held that a conviction for offences under Ss. 195 and 211 I. P. C. is not illegal merely because the sanction required by S. 195 of the Cr. P. Code is not obtained. *Ismael Rawther v. Shunmugavasa*, 20 Mad. 149 approved. *Raj Chunder v. Jour Chunder*, 22 Cal. 176 dissented from.

Benson & Sankaran Nair J. J.

IN RE PERUMALLA NAYADU, 2 M. L. J. 493.

—————**Sec. 195 (6) and (c)—***Fabrication of evidence and forgery—Document forming part of the record in a suit—Sanction of the Civil Court necessary.* When a document contended to be a fabrication of evidence and forgery by petition was filed by him in Civil Court and was produced by him before the arbitrator to whom a reference had been made.

Held, that the sanction of the Civil Court was necessary before even summons can be issued by the Criminal Court. *Benson & Wallis J. J.*

K. PUTTIAH CHETTY V. VEERASAMY MUDALI, 2 M. L. T. 496.

—————**S. 195, 439, 476—***Difference between sanction and complaint under s. 195—Offences against public justice before Court.* Where an application for revision was made against an order of a Court directing prosecution of sec. 476, Cr. Pro. (for offences under sec. 191, 196, I. P. C. held that no such application should lie against such order, the direction of the Court being equivalent to a complaint under sec. 476 (2) Cr. Pro. (VII Bom. L. R. 84 XXIII Bom. 205). That there was an obvious distinction between an order of a court granting sanction to a private individual or to a public servant, and a direction of the Court that a certain person should be prosecuted, because private individuals might be actuated by unworthy or vindictive motives and public servants might entertain mistaken notions or act upon misguided impulse whereas no motives could be imputed to a Court of justice whose action must be deemed to be taken in the interests of justice alone and after judicial consideration of the special circum-

stances of the case before it after hearing what each side had to say (XVII K. L. R. 305 distinguished); and that accordingly the rule was that an order granting, refusing or revoking sanction was subject to revision but a complaint was not; (XXIII Mad. 205 XXVI Mad, 98.

SONI LAKHU V. AZAM, 17 K. L. R. 316.

————S. 197—*Sanction to prosecute public servant like chief constable charged under s. 324 and 355 not necessary.* Where a complaint charging a Fouzdar (Chief Constable) with offence under Sec. 324 and 355 was rejected for want of sanction under S. 197, Cr. P. Code. *Held* that the words of that section meant to relate only to those acts and omissions which were believed to be offences under the Penal law when they were committed by a public servant, that it would be inexpedient that such public servants as here mentioned, should be exempted from criminal liability for all acts amounting to offences done by them unless sanction were obtained for their prosecution (7 Bom. H. C. R. 61, I. L. R. 2 Bom. 481, XXVI Cal 832,) that s. 197 made sanction necessary in case of offences peculiar to the accused's position as a public servant, in other words, the being a public servant was a necessary element in and the gist of the offences to prosecute which sanction was necessary and that the charge of beating or assault fell altogether outside the special category and should be dealt with as in the case of a private individual.

VALIA MULJI V. LATHI STATE, 17 K. L. R. 319.

————S. 203—*Second complaint—first, dismissed summarily—Whether second barred*—A Magistrate is not precluded from taking up a complaint on the facts on which a similar complaint had been summarily dismissed on a former occasion, and if it is shown that the complainant has some grounds for his complaint, the Magistrate should admit it. *Queen Empress v. Adam Khan* I. L. R. 22 All. 108 distinguished. *Knox J.*

BHAGWAN V. DIBBA 5 A. L. J. 137—1908, A. W. N. p. 67.

————secs. 234, 235, 480, 482, 537—*Misjoinder of charges—Drawing up of proceedings on the same day the offence is committed—I. P. Code secs. 178, 179—Refusing to take an oath—Refusing to answer question. Oath, refusal to take.*—Where at the same trial an accused person is charged with two offences under sec. 178 of the I. P. Code and two offences under Sec. 179 of the I. P. Code.

Held the case was not governed by sec. 234 of the Criminal Procedure Code and there was no misjoinder. Moreover, the facts having all been admitted and the sentence passed being practically for only one of the offences, the accused was not prejudiced and irregularity, if any, was cured by sec.

537 of the C. P. Code. Section 482 does not require the Magistrate to draw up proceedings on the same day that the offence is committed. The section need not be read along with sec. 480 of the Criminal P. Code.

Quæra. Whether a person who has once committed an offence under Sec 178 of the I. P. Code can be held to have committed a further offence under sec. 179 of the I. P. Code when he refuses to answer the questions put to him.

Rampini & Sharfuddin J. J.

BEPIN CHANDRA PAL v. EMPERO., 7 C. L. J. 63.

——— **S. 256**—*Right of accused to recall prosecution witnesses for cross examination—denial of trial de novo.*—If he is accused in a criminal case has a right under S. 256 Cr. P. Code to have the witnesses for the prosecution recalled and cross examined after charge; where the Magistrate declined to give such opportunity and passed judgment against the accused, the High Court set aside the conviction and ordered retrial before another Magistrate of competent jurisdiction.

Cuspersz & Chitty J. J.

GOPAL SHAKH v. EMP., 7, C. L. J. 240.

——— **Sec 257**—*Cross examination of prosecution witnesses—Right of accused.*—It is the duty of the Magistrate to re-summon for cross-examination, after charge is framed against the accused, all or any of the prosecution witnesses that he may demand, and he can not be called upon to pay expenses of the witnesses.

Shah Din J.

CHAND v. THE CROWN 9 P. L. R. 113.

——— **S. 271**—*Statement by prisoner when called upon to plead—Procedure—Practice.*—In cases when an accused person when called upon to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement more or less admitting guilt, it would be much safer if the Judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way, recording the evidence.

Bannerji & Richards J. J.

EMPEROR v. DEOKI 5 A. L. J. 157 = 1908, A. W. N. p. 54.

——— **S. 307**—*Reference to High Court—Sessions Judge—Points of reference.* In referring to case to the High Court under S. 307 of the Cr. P. Code, the Sessions Judge must say in his reference in clear and unambiguous terms what is the offence which has, in his opinion, been committed by the accused, and on what grounds in that respect, he differs from the jury. When a reference, under the section, is made by the Sessions Judge, he should state with some fulness his view of the evidence and the credibility of the more important witnesses, because not being in a position to pro-

nounce any opinion upon the demeanour of the witnesses the High Court has to attach more or less weight to the opinion of the Judge who saw and heard the witnesses.

Chandavarkar & Knight J J.

EMPEROR v. CHANDRA, 10 Bom. L. R. 173.

————S. 342 and 362—*Evidence, recording of, in petty cases—Magistrate to use discretion—Retrial—Transfer.* Section 362 of the Cr. P. Code does not mean that a Presidency Magistrate can act arbitrarily and record nothing by way of evidence in cases in which he is not bound to take down evidence in the manner prescribed in the section. In such cases the section merely gives him a discretion to take down the evidence or not, and the discretion should be exercised judicially in a reasonable spirit and not arbitrarily. There may be no necessity to record any evidence in “morning cases.” But where a respectable person is charged with an offence reflecting on his character and serious allegations are levelled against him, there ought to be some recorded of evidence to enable him in case of conviction to go to the High Court.

Even in a summary case a Magistrate is bound to record a summary of the accused’s examination and any statement in the course of that examination.

S. 342, Criminal Procedure Code, makes it incumbent upon the Magistrate to examine the accused and to give him an opportunity of explaining away whatever may have been decided against him in the evidence for the prosecution.

Where a Presidency Magistrate had made up his mind regarding a case the High Court on the case coming under its revisional jurisdiction transferred it to another Magistrate for retrial.

Chandavarkar & Knight J.J.

EMPEROR v. HARISCHANDRA, 10 Bom. L. R. 201.

————Ss 367, 424—*Judgment of Criminal Court on appeal—Contents of—Reformatory Schools Act, Sec. 16.* S. 16 of Act VIII of 1897 does not relieve an Appellate Court of the duty of seeing whether a conviction or sentence is legally maintainable

Held, that the judgment of the Appellate Court in the following words did not comply with the requirements of Ss 367 and 424 of the Criminal Procedure Code.

Kensington J.

RAM SING v. THE CROWN, 9 P L R. 140.

————Secs. 435, 438, 439—*Revision—Practice—Sentence reduced by Sessions Court—Application by District Magistrate asking for enhancement.* The powers given to a District Magistrate to make a reference to the High Court, relate to proceedings before an inferior Court, and do

not empower him to question the propriety of a judgment or sentence passed by a superior criminal authority as the Sessions Judge. In cases where he feels it necessary to question the adequacy of sentence by a superior Court, he should not instruct but inform the Police Prosecutor, who might after receiving proper instructions from the local government lay the matter before the High Court on his own initiative. Though under sec. 439, Criminal Procedure Code, the High Court can interfere on information derived from any source whatsoever, it will not as a rule entertain a reference from the District Magistrate under sec. 438 or a revision application filed by the Public Prosecutor under instructions from the District Magistrate, which has for its object the enhancement of a sentence reduced by the Sessions Judge.

Crouch and Knight J. J.

THE CROWN v. SHAH NAWAR wd. BACHAL, 1 Sind L. R. 40.

——— **Ss. 437, 439**—*District Magistrate—Powers of revision—Misappreciation of evidence by sub Magistrate and discharge*—Where a Court competent to decide whether the accused is guilty or not holds that he is not guilty on consideration of the evidence adduced by the prosecution, that finding should if at all be set aside only by a Court competent to set aside such a finding of fact i. e. by the High Court under s. 439 Cr. P. C. The District Magistrate is not entitled to come to a conclusion on the evidence and hold that a *prima facie* case has been made out and order further inquiry by another Magistrate. The proper course for the District Magistrate to take is to refer the matter to the High Court. It may be different when he exercises his powers for reasons other than mere appreciation of evidence. The proper function of a District Magistrate is criticism. He ought to point out to the Subordinate Magistrate the reasons which may have led him to an incorrect conclusion but not dictate to him the decision to be pronounced.

S. Nair J.

LAKSHMINARASAPA v. VENCATAPA, 18 M. L. J. 57.

——— **S. 439.**—*Revision—Practice—Discretion of Court as to entertainment of application in revision.*—*Held.* that it is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. *Emperor v. Kali Charan* (Weekly Notes 1904, p. 233) and *Gully v. Bakar Hussin* (Weekly Notes 1905, p. 279) followed.

Knox J.

SHAFQAT-ULLAH v. WALI AHMAD KHAN, A. W. N. 1908, 25.

——— **Ss. 476, 439.**—*Revision—Powers of High Court—Criminal Procedure Code, ss. 161, 162—Statements made to police officers*—“Stage of

a judicial proceeding.—*Held* that the High Court has jurisdiction to interfere in revision with an order passed under section 476 of the Code of Criminal Procedure. *Held* also that a statement made to an investigating police officer under section 161 and recorded by him under the provisions of section 162 of the Code cannot be made the foundation of an order for the prosecution under section 193 of the Indian Penal Code of the person making it.

Knox J.

EMPEROR v. MUHAMMAD USMAN, A. W. N., 1908, 22.

—————**S. 487**—*Presidency Magistrate—power to try case of disobedience of his own order—Indian Penal Code sec. 180.* A Presidency Magistrate has no jurisdiction to try a case under sec. 188 I. P. Code, when the order which is alleged to have been disobeyed was an order which he had himself passed.

Rampini & Sharfuddin J. J.

LEAKUT HUSSEIN v. EMHEROR, 7 C. L. J. 70.

—————**Section 526**—*Transfer—Bias—Evidenced judicially recorded in another case—opinion formed therefrom.* The accused applied for a transfer of his case on the ground that in another criminal case arising out of the transaction, the Magistrate expressed decided opinions, not only on the facts, but as to the credibility of certain witnesses, and that he could not therefore try the present case with an unbiased mind.

Held that interest or bias is not to be inferred from the opinions formed on evidence judicially recorded, and the Magistrate was not therefore disqualified to try the case.

Lucas & Pratt J. C.

THE CROWN v. KAMIL wd. SOBHARAO 1 Sind L. R. 37

Jury—*Judge's opinion on evidence.* It is a misdirection for a judge to say that he sees no reasons to disbelieve a particular witness. He ought to leave the question of believing or disbelieving to the jury. In placing a suggestion made by the crown prosecutor without any evidence to support it before the jury, the judge ought to point out that there is no evidence to support the suggestion. The Judge ought to tell the jury that the evidence of witnesses taken under S 114, Cr. P. Code must be accepted with great deal of caution. He ought to point out that it is not always proper for a police officer to get such statements recorded for the purpose of penning the witnesses down to some statement when they are not entirely free from police influence.

Mitra & Casperæ J. J.

KALISINGH v EMP. 7 Cal. L. J. 246.

Penal Code, Ss. 99, 100, 147 and 148—*Rioting—Right of private defence, where the parties of the complainant & accused engaged in a free fight, and when the accused knew that they would be resisted in their acts—Jury, misdirection in the charge to.*—When a body of men go out armed

to exercise a right or a supposed right, knowing that they will be resisted by another body of men, in their act, and when the former is engaged in the exercise of that right or supposed right, the latter resisting, a free fight ensues between the rival parties in defiance of the remonstrance of Police constable present on the spot with the result that a man is killed and others wounded, questions of right and who are the aggressors and who are the defending party do not arise for consideration. In re *Kali Baihari* I. C. L. R. 521 (1878) followed.

No person has the right to take the law into his own hands for the protection of his person or property, if there is a reasonable opportunity of redress by recourse to the public authorities

The right of self-help when it causes or is likely to cause damage to the person or property of another person must be restricted and recourse to public authorities must be insisted on. *Rampini & Sharfuddin J. J.*

KABIRUDDIN v. THE KING EMPEROR 12 C. W. N. 384.

———**Ss. 256—Possessing implements for counterfeiting—Queen's coin—Evidence.** Where the accused was convicted of being in possession of implements for counterfeiting and of possessing counterfeit Queen's coins on the evidence of (1) a person who now denied a conflicting statement made by him on oath on a previous occasion and (2) of a person who by his disposition showed enmity with the accused and (3) a station house officer whose evidence could not be accepted without corroboration.

Held, that the evidence on record was not sufficient to support the conviction.

Sankaran Nair J.

IN RE KUMMARA GURUNAYYA, 3 M. L. J. 140.

———**Sec. 392—Murder—Evidence opposed to probabilities.** When a girl of 15 and a boy of 13 years deposed to having seen the accused throw the deceased down more than once and did not state the fact to persons they would have ordinarily reported to and further withheld the fact from the police and the magistracy for a long time after the incident.

Held, acquitting the accused that the matter was not under the circumstances free from doubt.

Benson & Wallis J. J.

IN RE ERIKALA SUBBADU, 2 M. L. T. 476.

———**Ss. 304, 303—Hurt—Culpable homicide—Benefit of a doubt—Police pressure.** The accused was convicted on an offence under sec. 304 I. P. Code for having stabbed a person with a knife. The occurrence took place between 8 and 9 p. m. in a lane in the city of Lahore. It was dark except for a street lamp in the neighbourhood. It appeared

that there were at least five men struggling with deceased and it was difficult to be sure that the witness could in fact see who stabbed the deceased. It was found that great pressure had been brought by the police to bear on the witnesses to make them give evidence as desired. The conviction was altered to one under s. 323 I. P. Code giving the benefit of the doubt to the accused. *Clarke C. J.*

SHIB DAS V. CHARUN, 9 P. L. R. No 47=3 P. W. R.

———**S. 338**—*Operation for cataract—Failure of Operation—Negligence.* When an accused in good faith performed an operation upon a woman with her consent for cataract according to the recognized method of Indian Eye Surgery, the result of which that she lost her eyesight. *Held*, that he was not guilty of an offence under S. 338, I. P. Code.

Aikman J.

SURAJ BALI V. EMP. 5 A. L. J. 155.

———**S. 372**—*Essentials of the offence—Letting out minor for single act of intercourse.* The words 'buys' and 'hires' in S. 373 convey the meaning that to constitute an offence, the possession of the minor must have been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the person having the possession. The words "otherwise obtain possession" are not intended to do more than include other modes of obtaining the same kind of possession as that of a buyer or hirer. Merely letting out for a single act of intercourse is not sufficient to constitute an offence under S. 373, I. P. Code.

Shaw J. C.

NGA SHWE THWE V. EMP., 13 Bur. L. R. 389.

———**S. 379**—*Theft of cash—Stolen money—Found secreted and separated from other cash—Its evidentiary value* Where the accused being the only inmate of the complainant's compartment was found to have secreted and separated exactly the lost amount in his trouser pocket. *Held*, it was a strong circumstantial evidence showing the guilt of the accused

Boddam J.

THE PUBLIC PROSECUTOR V. SADDAYAN, 2 M. L. T. 498.

———**Ss. 403, 409**—*Conviction for the minor offence—claim to be tried for major offence—conviction not invalid*—Where a public servant was convicted by a 2nd Class Magistrate on a charge of Criminal misappropriation but the evidence seemed to disclose to the appellate Court that Criminal breach of trust by a public servant had been committed.

Held that the conviction for the minor offence was not invalid and that it was not expedient in the interests of Justice to require prosecution and trial in respect of the graver charge. Case reported in 2 Weirs' Cr. Rulings p. 482 followed.

Subrahmaniam Aiyer J.

NARAYANA NAICKEN V. THE TAHSILDAR OF CONJEEVARAM 2 M. L. T. 495.

———**S. 409**—*Subject matter of the breach of trust, not belonging to Government—Criminal Procedure Code Section 222 (2)—Inclusion of various items in one charge.*—*Held*, (1) Section 409, Indian Penal Code, does not require the property in respect of which criminal breach of trust is committed, to be the property of Government, but only requires that it shall be entrusted to a public servant in his capacity as such public servant.

(2) The inclusion of various items, in respect of which the criminal breach of trust was alleged to have been committed, in one charge does not vitiate the trial, as such a procedure is in accordance with the provisions of sec. 222 clause 2 of the Criminal Procedure Code.

Lucas & Pratt J. C.

THE CROWN v. ALI BUX. 1 Sind L. R. 38.

———**Sec. 423—*Fraudulent execution of deed to stave off pre-emption suits.*** The accused executed a fictitious saledeed in favour of other persons to stave off pre-emption by suits by parties entitled to the right of pre-emption.

Held, that the accused was guilty of an offence under sec. 423 of the I. P. Code. *Robertson J.*

LACHHMAN DAS v. THE CROWN, 9 Pun. L. R. 138.

———**Sec. 426—*Mischief—Removal of earth from Odoi—No right to remove.*** *Held*, that removal of earth from Odoi in such a manner as to cause the destruction of the complaint's bund without any right to do so amounted to mischief. *Wallis J.*

In re BAPPU REDDI, 3 M. L. T. 117.

———**Sec. 430—*Act No. XII of (1270), s. 70—Mischief—Definition.*** Certain persons having been found to have cut through the bank of a canal distributary and irrigated their own fields therefrom, it was *held* that they would be more properly convicted of an offence under section 70 of Act No. VIII of 1875 than of an offence under section 430 of the Indian Penal Code, in the absence of evidence that by the act done a diminution to the supply of water for agricultural purposes had been caused. *Knox J.*

EMPEROR v. TAJ-UD-DIN, A. W. N., 1908, 55 = 5 A. L. J. 159.

———**Ss. 443, 447, 457—*House breaking by night—Attempt—Going to the roof of a house with a stick and an instrument used for house breaking.*** *Held*, that a person who goes at night on the roof of the house of another person with a stick and an instrument used for house breaking is guilty of an offence under S. 447 of the I. P. Code and not of an attempt to commit house-breaking by night, an offence punishable under Ss. 457 and 511 of the Code.

Johnstone & Lalchand J. J.

WALIDAS v. THE CROWN, 9 P. L. R. 141.

———**S. 447—*Claim of right.*** Where the accused acts on a belief of his own right he cannot be held guilty of criminal trespass.

Stephen & Cox J. J.

JURAKHAN SINGH v. EMP., 7 Cal. L. J. 238.

———**S. 480, 482—*Selling one's oil in tins of another Company—Tins materially altered but name of the Company—embossed on tin.*** The accused refined illuminant oil from crude petroleum and put it into tins which had been issued by the Burma Oil Company filled with its own oil. The tins issued by it used to bear its trade-

mark and name prominently embossed thereon. The accused took off the tins and replaced them with handles not bearing the Company's name, changed the caps and affixed a paper label denoting that oil was manufactured at accused's refinery. *Held*, that the accused was liable under S. 480, I. P. Code. The question that the traders in the oil or every wary purchasers would not be likely to believe that the oil sold in old tins with clumsy handles was the Company's oil is immaterial, the question is whether the sale of the accused's oil in tins bearing the Company's trademark was calculated to deceive the unwary purchaser. *Fox C-J.*

EMP v. NGO PO, 13 Burma L. R. 381.

Police Act (5 of 1861) Ss. 17, 19—Special constables—Appointment, Circumstances justifying—Disobedience of order under sec. 17.—No offence under sec. 19—The circumstances which justify the appointment of special constables under sec 17 of Act V of 1861 are that a disturbance of peace is apprehended and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended.

In the absence of those circumstances an order under Sec. 17 of Act V of 1861 is improper and there should be no conviction of the person appointed special constable for disobedience of the same.

Rampini & Sharfuddin. J. J.

BENI MADHAL v. THE EMPOROR. 12 C. W. N. 366.

Practice—Sanction—grant of—conflicting statements—In granting sanction to prosecute a witness for making two contradictory statements, if his explanation, which is correct, is not put forward first and another considered explanation is put instead, the one afterwards, put (though true) must be considered an after thought, and no notice should be taken of it, but that question must be decided by the trying Magistrate, and all possible consideration should be given in order to see whether they cannot be reconciled and whether the obvious explanation may not have been in some way delayed by a confusion of mind or any other doubtful circumstances, the trying Magistrate being the proper tribunal to consider the argument if it is advanced before him.

VALLAS LALJI RAMJI v. SUTAR ARJAN PUNJA, 17 K. L. R. 206.

Practice—Magistrate—explanation—Supplement to judgment. A Magistrate can not supplement his judgment by his explanation to the superior Court; of there are no material findings in the judgment the defect cannot be cured by the Magistrate's explanation. *Stephen & Coxe J.J.*

JURAKHAN SINGH, 7 Cal. L. J. 234.

Revision—Criminal case—Judicial proceeding—Punjab Laws Act (IV of 1872), sec 45—Vagrant Order requiring foreign vagrants to leave district. *Held*, that an order passed under sec. 45 of the Punjab Laws Act, requiring a band of foreign vagrants to leave a district being an executive order, is not open to revision by Chief Court

Reid & Shah Din J. J.

SUNDAR v. THE CROWN, 9 Pun. L. R. 109.

DIGEST OF INDIAN (CRIMINAL) CASES

Abkari Act—(*Bombay Act V of 1878*), S. 16—*Country-liquor—Attachment in execution of a money-decree—Sale.* Country-liquor is not exempt from attachment and sale in execution of a money-decree passed by a Civil Court.

Under section 16 of the Bombay Abkari Act the Collector's permission is necessary for the sale, but it is not necessary to the attachment so far as the attachment can be made without removal of the liquor. But sale without the Collector's permission would apparently subject the seller to prosecution under the Bombay Abkari Act.

Jenkins C. J. & Heaton J.

PURSHOTTAM v. BALVANT, 32 Bom. 157.

—secs. 47, 9, 11—*Kaju liquor country liquor—Possession of the liquor—Mere possession of the liquor under the maximum limits is no offence.*—The mere possession of Kaju liquor on which no duty has been paid, but which is under the quantity fixed by sec. 17 of the Abkari Act, is not punishable under sec. 47 of the Act (*Bom. Act V of 1878*).

Chandavarkar & Knight J. J.

EMPEROR v. DATTA 10 Bom. L. R. 284.

Bombay Gambling Act (IV of 1887).—Section 6—*Enquiry by the Magistrate—Money found on the person of accused—Confiscation of—Held*, (1) Section 6 of the Gambling Act does not make it obligatory on the Magistrate to make any enquiry before issuing a warrant.

(2) Further the section does not require that the informant should have personal knowledge about the gambling. It is sufficient, if he testifies to a reasonable suspicion that a house, room or place is used as a common gambling house.

(3) Where the accused are convicted, the Magistrate cannot order the money found on their person to be confiscated. *Imperator vs. Walli Mus-saji*, 26 Bom. followed.

Pratt & Crouch J. C.

Imperator vs. Hiro I. Sind L. R. Cr. 64.

—Secs. 6 and 7—*Warrant—Further enquiry by Magistrate—Practice—Warrant and complaint—Production of.*—Held (1) "The presumptions under section 7 of the Gambling Act will not arise unless it is shown that the warrant is issued under the Provisions of Section 6, and there-

fore in every case it is necessary that the Magistrate should exhibit and bring on the record the complaint on oath and the warrant."

(2) Where a complaint has been made to a Magistrate, Section 6 of the Act does not make it obligatory on him to make any further enquiry before issuing a "warrant" if he thinks it necessary to do so.

Imperor vs. Hiro. I. S. L. R. Cr. P. 64 followed.

Pratt & Crouch J. C.

IMPEROR vs. PAMAN I. Sind L. R. Cr. 67.

Criminal Procedure Code, S. 4 (r)—Act No. XVIII of 1879 (Legal Practitioner's Act), S. 9—Mukhtiar—Authority of Mukhtiar to practise in Criminal Courts. A mukhtiar is not entitled to practise generally and as of right in Criminal Courts, but can act only when he has received the permission of the Court to Act in any particular proceeding. (F. B.)

ANANT RAM, In the matter of the petition of. 30 All. 66.

———**Ss. 110 and 526.—Security for good behaviour—Transfer.** Held that proceedings under S. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. In the matter of the petition of Amar Singh, 16 All. 9, and In the matter of the petition of Gudar Singh, 19 All. 291, followed.

Bannerji & Aikman J. J.

EMPEROR v. MAHENDRA SINGH, 30 All. 47.

———**Sec. 123.—Security for good behaviour—Term exceeding one year—Reference to Sessions Judge—Sessions Judge's power to go into the merits and to consider the sufficiency of the security.**—Sub sec. (3) of sec. 123 of the Criminal Procedure Code contemplates a decision by the Sessions Judge on the merits of the order demanding security for good behaviour. It does not authorise the Sessions Judge to consider the sufficiency of the security offered.

Caspersz & Chitty J. J.

GANGADAS v. THE EMPEROR 12 C. W. N. 463.

———**Sec. 145 or Sec. 107.—Dispute relating to fishery—proper section to proceed under.**—In the case of a *bonafide* dispute likely to cause a breach of the peace existing between two parties relating to a fishery right, the proper section to proceed under for preventing a breach of the peace is sec. 145, Cr. P. C., and not sec. 107.

The words of sec. 145 are mandatory while those of sec. 107 are discretionary. Where in a dispute likely to cause a breach of the peace arising between two parties concerning a fishery, the Magistrate drew up a proceeding

under sec. 107, Cr. P. C., with the result that one of the parties was bound down to keep the peace.

Held—That the order under sec. 107 Cr. P. C., is bad and ought to be set aside. If there is still a likelihood of a breach of the peace the Magistrate may proceed under sec. 145, Cr. P. C. if he thinks fit. *Dole Govind v. Dhanukhan* 25 Cal. 559 followed.

Mitra & Fletcher J. J.

BALAJIT v. BHOJU GHOSE 12 C. W. N. 487.

—S. 145—Magistrate holding inquiry under section 145 cannot direct Subordinate Magistrate to take evidence—order based on such evidence void as made without jurisdiction) A Magistrate holding an inquiry as to possession under section 145, clause 4 of the Code of Criminal Procedure, is bound to take the evidence himself and cannot delegate to a Subordinate Magistrate the duty of recording such evidence. An order of such Magistrate based solely and substantially on evidence recorded by a Subordinate Magistrate is not an order based on legal evidence and is void as made without jurisdiction.

Wallis J.

ARUMUGA GOVINDAN v. VENKATASUBBIE. 31 Mad. 82.

—S. 145, 435—Clause 3, likely—Imminent or probable—Discretion of Magistrate in fit cases—Powers of the Revisional Court.—Held per *Lucas J. C. and Crouch A. J. C. Pratt, A. J. C. dissenting*—(1) The word “likely” in Section 145 Cr. Pro. Code does not imply that the breach of the peace complained of must be imminent or likely to happen immediately. It simply denotes, that there should be a probability or likelihood of a breach of the peace.

(2) The intention of the Legislature in enacting this Section clearly was to leave it to the Magistrate’s discretion to determine whether not the conditions precedent to the exercise of his jurisdiction, as laid down in the section, had arisen, but where he held that such conditions did exist, he had no option of refusing to exercise his jurisdiction. The word “shall” cannot be interpreted to give the Magistrate discretion to refuse to act when the conditions precedent to the exercise of his jurisdiction have been complied with.

Per Pratt, A. J. C.—(1) “The breach of the peace must be coincident with the present existence of the dispute. The breach of the peace contemplated by the section is one that is imminent or likely to occur in the present, and not one that is remote or likely to occur in the future.”

(2) “Though there may be a dispute about possession and the apprehen-

nson of an imminent breach of the peace, the Magistrate may, if he finds one party already in possession and another party committing act of aggression, think it more appropriate to take action against the aggressor under Chapter VIII " instead of acting under this section.

(3) The word " shall " in section 145, Criminal Procedure Code, is not mandatory, but directory and leaves it to the discretion of the Magistrate whether he will act or not under this section, even where the conditions precedent to the exercise of his jurisdiction do exist and that it being discretion.

Per Crouch, A. J.—The words " mandatory " and " directory " are arbitrary terms used to distinguish those cases in which a breach of a rule of law has fatal results and those in which it has no such fatal results, but there is no authority for holding that when a rule of law is merely directory, an officer can obey or disobey the same at his discretion.

Per Lucas, J. C., and Pratt, A. J. C.—In view of section 435, clause 3, Criminal Procedure Code, the Court of the Judicial Commissioner has no jurisdiction to revise the order of a Magistrate acting or refusing to act under Chapter VIII " instead of acting under this section. *F. B.*

BALMUKAND JAGANATH *vs.* THE CROWN, I. Sind L. R. CR. 50

———**Ss. 145, 435 and 537—Revision—Procedure—Irregularity not prejudicial to either party.** In the course of proceedings commenced under S. 107 of the Code of Criminal Procedure it was found by the Magistrate that there was a dispute relating to land and likely to cause a breach of the peace between the two parties before him. After giving both an opportunity of being heard, the Magistrate passed an order under S. 145 of the Code maintaining one party in possession. *Held* that, notwithstanding that the procedure of the Magistrate was in some respects defective, there was no cause for the exercise of the revisional jurisdiction of the High Court, inasmuch as the parties had been given an opportunity of representing their respective cases, and there was nothing to show that the irregularities in procedure which had occurred had caused any prejudice to either. *In the matter of the petition of T. A. Martin*, 27 All 296, referred to.

Richards J.

DEBI PRASAD *v.* SHEODAT RAI, 30 All. 41.

———**S. 162 —Bombay City Police Act (IV of 1902) S. 63—Evidence Act, Ss. 24 and 167—Amended Letters Patent, 1865, cl. 26—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused, admissibility of.** On P, an entry clerk in the General Post Office, Bombay, was charged with

having committed theft in respect of a registered letter. S., a friend of the accused, had made a statement to a Police Officer which the latter had taken down in writing. At the trial S. denied having made the statement, whereupon the Presiding Judge admitted the statement in evidence both to discredit S. and also as evidence against P. in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P.'s Counsel, the Advocate General certified under clause 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review by the Full Bench.

Held, having regard to S. 162 of the Criminal Procedure Code the said document ought not to have been admitted or used in evidence against the accused.

Per Russell, Ag. C. J.—The document might be used to contradict the witness not by putting in the statement, but by putting it in the hands of the Police Officer to refresh his memory and to get him to contradict the statement of S.

Per Chandavarkar J.—It is the statement contained in the writing which only could be used and that only to impeach the credit of such witness in the manner provided by the Indian Evidence Act.

Per Batty, J.—The writing might have been used for the purpose of refreshing the memory of the witness cross-examined as to the fact of the statement either on behalf of the prosecution or on behalf of the defence provided that it was treated by the prosecution only for the purpose of impeaching the credit or in corroboration of the witness who made it.

Per Beaman J.—The writing ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution for the nominal purpose of contradicting the witness. (F. B.)

EMPEROR v. NARAYAN RAGHUNATH PATKI, 32 Bom. 111.

——— **Sec. 195—Sanction to prosecute—Penal Code, secs 196, 211**
False case—False evidence. Sanction to prosecute under sec. 211, Indian Penal Code, should only be given where the case is deliberately false; where the case brought is not false in substance, but is bolstered up by false evidence, the proper section to give sanction to prosecute under is sec. 196 of the Indian Penal Code. *Rampini & Sharfudin J. J.*

BHOLANATH V. HARI, 7 C. L. J. 167.

——— **Secs. 195, 235—No sanction required when the actual offence charged is not one for which sanction is necessary under s. 195 of the**

Code of Criminal Procedure, though the facts alleged disclose an offence for which no prosecution can be entertained without sanction under that section. The agent of a decree-holder accompanied an Amin to execute the decree and was obstructed and assaulted in endeavouring to effect execution. The agent applied to the Court for sanction to prosecute for an offence under section 186, Indian Penal Code, and on the sanction being refused, he presented a complaint against the party who assaulted him for offences under sections 322 and 325 and Indian Penal Code:—*Held*, that no sanction under section 195 of the Code of Criminal Procedure was necessary, although the facts alleged disclosed an offence under sec. 186 of the Indian Penal Code. Where in the course of the commission of an offence for which no prosecution can be entertained without sanction, other offences, which may form the subject of separate charges under section 235 of the Code of Criminal Procedure, and for which no sanction is required, are committed, a complaint in respect of the latter offences can be entertained without sanction being obtained for the former. Miller J.

KRISTMA PILLAI v. KRISHNA KONAN, 31 Mad., 43.

———*Secs. 195, 537—No sentence of competent Court to be reversed for want of sanction under s. 195.* The words ‘subject to the provisions herein before contained’ in section 537 of the Code of Criminal Procedure must not be construed in such a way as to nullify the provisions of clause (b) of the same section “that no sentence of a Court of competent jurisdiction shall be reversed on appeal for want of any sanction required by section 195. Want of sanction under section 195 is no ground on appeal for setting aside a conviction after trial for any offence mentioned in the section. Benson & S. Nair J. J.

PERUMALLA NAYADU v. EMPEROR, 31 Mad., 80.

———*Secs. 202, 204, 242, 244, and 439—Case being tried by a Magistrate who issued process on complaint without inquiry under sec. 202, Criminal Procedure Code—District Magistrate ordering the police subsequently to make independent investigation even as head of Excise Administration illegal—Interference by Chief Court—Excise Act, XII of 1896.* A complaint was filed on behalf of the Collector in Court of the Magistrate 1st Class against S. under sec. 49 of Act XII of 1896; process was issued under sec. 204, Cr. P. Code, without any inquiry under S. 202 and proceedings under sec. 242 and 244 of the same Code were also taken by the said Court. Notwithstanding this the said Collector who also was the District Magistrate ordered the police to make independent investigation in the case. On being asked by the Chief Court, the District Magistrate explained that he

acted as Head of the Exercise Administration.

Held, that the procedure adopted by the District Magistrate as such or as a Collector was wholly illegal and *ultra vires*.

Held also, that when an illegal order is passed and action taken which involves matters coming within the purview of law and justice and within the scope of authority of the Courts, such authority can not be ousted by the mere *ipse dixit* of the officer in his executive capacity that he was not acting as a judicial officer but the High Court can in such cases interfere in revision.

Robertson J.

SHRI NATH v. THE CROWN, 3 P. W. R. No. 1.

———**Ss. 287, 288, 350 & 436**—“*Order him to be committed*”—“*Committing magistrate*”—*meaning of*—*Held* that the words “Order him to be committed” in sec. 436 Cr. P. Code do not mean more than ‘pass an order for his committal’ and enable the District Magistrate himself, to make a committal or to direct a subordinate Magistrate to make a committal. The phrase “committing Magistrate” in Secs. 287, 288 is merely a compendious way of referring to the Magistrate or Magistrates who held the preliminary inquiry on which the committal was made. *Q. E. V. Krishna Bhat* 10 Bom. 319 and *Q. E. v. Surendra Nath* 28 Cal. 397 referred to with approval.

Benson & Boddam J. J.

SESSIONS JUDGE MANGALORE v. MALINGA alias SOMAPPA 2 Cr. L. Repl. 59.

———**Ses. 297, 288**—*Misdirection to the Jury—Evidence Act. Sec. 27, 30*—*statement of co-accused leading to the discovery of relevant fact, when evidence—statement of a witness before investigating Magistrate, no evidence.*—The question whether a person was in police custody while making a confession is one for the Judge to decide; and the omission of the Judge to state to the Jury his finding on the point that a person was in police custody is not a misdirection. Under Sec. 27 and 30 of the Evidence Act the most that could be taken into consideration in the statement of an accused against another would be so much of the information amounting to a confession as was the immediate cause of the discovery of some relevant fact against the person making the statement.

A statement made by a witness to a Police Inspector or to an investigating Magistrate is no evidence against an accused, even though the statement before the investigating Magistrate is made in the presence of the accused; and a direction to the jury that such evidence is strong evidence against the accused is a serious misdirection.

Benson & Miller J. J.

SANKAPPA RAI 18 M. L. J. 67.

—————**Sec. 350—*Denovo trial—Change of trying Magistrate.***—
The provisions of sec 350 Cr. P. C. apply to all cases in which cases are transferred for whatever reasons from the file of one Magistrate to that another.

When a case is transferred under sec. 328, Cr. P. C. from the file of one Magistrate to that of another, the former ceases to exercise jurisdiction in the case and is succeeded by the latter in the exercise of the Jurisdiction within the meaning of sec. 350, Cr. P. C. *Deputy Legal Remembrancer v. Upen Dra Kumar* 12 C. W. N. 140 (1906)

Rampini & Sharfuddin J. J.

MOHESH V. THE EMPEROR 12 C. W. N. 416.

—————**S. 394, 395—*Magistrate cannot award imprisonment in lieu of whipping when on certificate of the Medical officer before infliction of whipping is reduced.***) The power of a Magistrate under section 395 of the Code of Criminal Procedure to award imprisonment in lieu of whipping is confined to cases in which under section 394 a sentence of whipping is wholly or partially prevented from being executed. Such power only exists when, under section 394 (1). a Medical officer present certifies that the offender is not in a fit state of health to undergo such punishment or when under section 394 (2) during the execution of the sentence a Medical officer certifies that the offender is not in a fit state of health to undergo the remainder of the sentence. There is no provision of law which authorises a Medical officer to certify, *before the infliction* of whipping, that the prisoner is fit to undergo only a smaller number of stripes than that actually ordered. Where in consequence of such a certificate a smaller number of stripes is inflicted, the Magistrate has no power to award imprisonment in lieu of the whipping not inflicted.

Benson & S. Nair J. J.

THE PUBLIC PROSECUTOR, 31 Mad., 84 = 2 Cr. L. Repl. 60.

—————**S. 407—*Withdrawal of appeal—Part heard appeal—Withdrawal—omission to examine witnesses by Court from which the appeal was withdrawn.***—It is competent to a District Magistrate to withdraw part—heard appeal from the file of a First Class Magistrate subordinate to him under Sec. 407, Cr. P. C.

The Court to which an appeal is transferred for disposal is not bound by any opinion as to the necessity for taking further evidence formed by the Court from which the appeal was still drawn. *Benson & Miller J. J.*

ALAGU V. AMBALAM, 18 M. L. J. 89.

—————**S. 439.—*Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive.*** It has been the invariable practice of the Bombay High Court, in cases that

come before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis.

Chandavarkar & Knight J. J.

EMPEROR v. CHINTO, 32 Bom. 162.

Emigration Act (XXI of 1883) S. 107.—*Servant offending under the Act in the course of his master's employment for his master's benefit—Master's liability—Artizan—Engine driver on board a steamer.* If a servant having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business every thing which he does within the scope of his employment for that purpose will be binding upon the master and the master will be criminally liable for such act of the servant under the Indian Emigration Act. In such a case the master's express knowledge of or consent to the act is not necessary, because by the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law.

A person engaged to drive an engine on board a steamer is an artizan within the meaning of the term as used in S. 107 of the Indian Emigration Act, 1883.

Chandavarkar & Knight, J. J.

EMPEROR v. HAJI SHAIK MAHOMED, 32 Bom. 10.

Evidence Act, Ss. 24, 167—Criminal Procedure Code, S. 162—Bombay City Police Act (IV of 1902) S. 61—Amended Letters Patent, 1865, cl. 26—Statement made by a witness to and taken down in writing by a Police Officer—Admissibility in evidence—Confession of accused, admissibility of. One P, an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of a registered letter. S, a friend of the accused, had made a statement to a Police officer which the latter had taken down in writing. At the trial S denied having made the statement whereupon the Presiding Judge admitted the statement in evidence both to discredit S and also as evidence against P in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P's Counsel the Advocate General certified under clause 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review by the Full Bench.

Held, having regard to S. 162 of the Criminal Procedure Code the said document ought not to have been admitted or used in evidence against the accused.

The further question was raised by Counsel for the accused whether the

confessions of the accused were irrelevant under Section 24 of the Indian Evidence Act.

Held, the confessions were rightly admitted in evidence.

Per *Batty, J.*—It is not sufficient to render a confession irrelevant under section 24 that there may have been added to it a statement which has been improperly induced by threat or promise. In order to make a confession irrelevant it must be shown that the confession itself was improperly induced.

Per *Davar J.*—In the absence of the point being reserved or certified by the Advocate General the Full Bench has no right to sit in appeal on the decision that the confession was legally admissible in evidence. (F. B)

EMPEROR v. NARAYAN RAGHUNATH PATKI, 32 Bom. 111.

———**Ss. 25, 26—Admission before Police—Information given by 1st accused upon which 2nd accused was questioned—Stolen property recovered.** Where the only evidence against the 1st accused in a case is that in consequence of information given by him the 2nd accused was questioned and produced the stolen property and that the 1st accused also admitted that he also committed theft. *Held* that the evidence was insufficient to convict him and that the confession was irrelevant as it did not lead directly to the recovery of the property.

Benson & Munro, J. J.

IPPARI RAMALINGAM v. EMPEROR, 2 Cr. L. Repl. 62.

Excise Act (Bengal Act 7 of 1878), Ss. 53, 59, 61—Offence under Ss. 53 and 64—License for sale and possession at a certain place—Sale at a different place—S. 59 of the Excise Act, offence under—Servant's liability for the master's act. The servant who delivers ganja to purchasers at the bidding of his master who sells it and receives the price cannot be convicted of offences under Ss. 53 and 61 of the Excise Act. When a person having a license for the sale and possession of ganja at a certain place, sells it at a different place, he commits an offence under S. 59 and not under Ss. 53 and 61 of the Excise Act.

Rampini & Sharfudin, J. J.

GOSHTA v. EMPEROR, 12 C. W. N. 461.

Extradition Act (XV of 1903) S. 8—Warrant issued by Political Agent, endorsement on—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement. Where a person was arrested upon a warrant issued by a Political Agent under the Indian Extradition Act, and is placed before a Magistrate, and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date although there was no endorsement on the warrant, giving the Magistrate power to pass such an order.

Held that in the absence of such an endorsement under S. 8 of the Act, the Magistrate had no authority to pass such an order.

Rampini & Sharfudin, J. J.

RAJ KUMAR v. TOTHAL, 7 C. L. J. 171.

Joint trial—*Theft and disposal of proceeds.* Ordinarily theft and the disposal of the proceeds would be parts of the same transaction and as proximity of time between the acts does not necessarily constitute them parts of the same transaction, so an appreciable interval of time between the two Acts does not prevent them from continuing to be parts of the same series of connected events and it is not necessary to show that the theft and disposal occurred within a few hours or a few days of each other. *Shaw J. C.*

NGA NYO v. EMP. 14 Bur. L. R. 38.

Gambling Act (3 of 1867) secs. 5 and 6—*Warrant for search of suspected house*—“*Credible information*”—*Procedure*—*Endorsement of warrant by officer to whom it was issued.*—Warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general: there is, therefore, no objection to the officer to whom such a warrant is originally issued endorsing it to another officer, provided that the latter is an officer to whom such warrant could be legally issued in the first instance.

Knox J.

EMPEROR v. KASHINATH, 30 All. 60.

Penal Code, secs. 182, 211.—*Criminal Procedure Code, section 195*—*Information given to the police alleged to be false*—*Procedure*—*Notice.*—Where a District Magistrate, upon a report made by the police that information given to them charging a person with a specific crime is false, orders the person giving such information to be prosecuted under section 211 of the Indian Penal Code, such order is not an order to which section 195 (b) of the Code of Criminal Procedure applies, neither is the order passed without jurisdiction if no previous notice to show cause is given to the accused. “The more proper course, however, would be to let the informant bring his witnesses into Court, hear them out, and then, if the case was considered to be a false case, to pass an order that the informant should be tried under section 211 of the Indian Penal Code. *Queen Empress v. Ganga Ram*, 8 All. 38, *Emperor v. Tula*, 29 All. 587 and *Haibut Khan v. King Emperor*, 33 Cal. 31, distinguished.

Knox J.

EMPEROR v. TABARAK ZAMAN KHAN, 30 All. 52.

—**Sec. 379, 143.**—*Conviction under*—*Recognizance to keep peace where justifiable.* A conviction under sec. 143 or under sec 379, I. P. C. is not of itself sufficient to sustain an order under sec. 106, Cr. P. C., un-

less it is clearly found that there was force employed, or that there were armed men present.

Kishore v. K, E. C. W. N. 517. *Sheo v. Mosawi*, 27 Cal. 983. and *Baidya v. Nimbran*, 30 Cal. followed. *Rampini & Sharfuddin J. J.*

CHANDRA v. EMPEROR, 7 C. L. J. 172.

—————**Sec. 406—Breach of trust—Case of civil nature—Magistrate Duty of.** Where in a case of breach of trust the trying Magistrate came to the conclusion that the case became one of a civil nature from a receipt and an affidavit filed in the case. *Held* that the Magistrate ought not to have confined himself to the affidavit and the receipt. He must form his opinion on the whole evidence produced by the prosecution. *Sankaran Nair J.*

CHINNAPPA BUTHEN, v. RUTHMA GRAMANY, 2 Cr. L. Repl. 61.

—————**Section 411—Stolen property—Joint occupancy of room—Presumption from nature of the property**—Three bags of grain, alleged to be stolen property, were found in a room which were in the occupation of two persons, and was locked at the time of the search. Both of them were convicted for being in possession of stolen property. *Held*, that the accused had been rightly convicted. Looking to the nature of the stolen property, both the accused must have known that the grain was in their room, and the presumption is that they were both accomplices and in possession of the property.

Pratt & Hayward J. C.

IMPERATOR vs. JUMO I. Sind L. R. Cr. 66.

—————**Sec. 441—Criminal trespass—Joint owner—possession.** A joint owner of property is entitled to have joint possession restored to him in a Civil Court but he is not justified to take the law into his own hands to recover the possession and if he does so, he becomes liable for criminal trespass.

Chandavarkar & Knight J. J.

EMPEROR v. GOPALRAO, 10 Bom. L. R. 285.

Practice—Criminal Procedure Code, sec. 439—Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive. It has been the invariable practice of the Bombay High Court, in cases that come before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that side.

Chandavarkar & Knight, J. J.

EMPEROR v. CHINTO, 32 Bom. 162.

—————**Property—Taken out of Accused's possession.** *Held*, that the property taken out of the possession of the accused who are acquitted should be handed over to them in the absence of a finding in the case that it belongs to any body else.

Sankaran, Nair J.

GOPARAJA v. EMPEROR, 2 Cr. L. Repl. 62.

DIGEST OF INDIAN (CRIMINAL) CASES.

Arms Act s: 13, 16.—*Possession of a gun received at presents*—A Sub-Inspector of Police not of the 1st grade who has been presented by Government with a revolver, commits no offence by possessing and going armed with a dagger.

NGA KAING v. EMPEROR. 1908 U. B. Cr. R. 9-11-07=7 Cr. L. J. 245.

Arms Act (XI of 1878) ss. 14 and 19 (f.)—*Temporary possession of a gun.* Section 10 (f) of the Arms Act does not make the mere possession of a gun punishable thereunder, but a possession contrary to s. 14 of the Act. The temporary possession of a gun by a man who has snatched it up to fire at a mad dog which had entered his premises, is not contemplated by s. 14.

Rampini & Snarfudin J. J.

PRABHAT CHANDRA CHOWDHRY v. EMPEROR, 35 Calc. 219.

—————**Possession of Weapon, requiring repairs.**—*Revolver out of repair—Acquittal Appeal by Local Government Sections 4, 13 and 19*—Held, that an arm, even out of order comes within its definition given in Section 4 of the Indian Arms Act XI of 1878; consequently possession of a revolver requiring some repairs without a license is punishable under Section 19 clause (e) of the Act. The test is not whether a particular weapon is serviceable, but whether it comes within the legal definition of an arm.

Robertson and Kensington J. J.

THE CROWN v. SAMIULLAH 3 P. W. R. 28.

Charge.—*Defect in-charge. omission to frame—conviction, validity of—Embezzlement.*—Penal Code Secs. 406 and 116.

Where the charge against the accused was to the effect that he on or before the 21st day of June 1907 committed breach of trust in respect of some deeds which he took from the complainant and was thereby guilty of an offence punishable under Sec. 406 I. P. C. but at the trial he was convicted of embezzling not the deeds but amounts obtained by dealing with those deeds,—Held. That the conviction is and ought to be set aside.

Where an accused, who was tried with the other accused against whom the above mentioned charge was framed, was convicted under Sec. 406 read with Sec. 116, I. P. C. without any specific charge having been

framed against him, but it appeared that he knew of the charge as he put in a written statement denying it. Held. that his conviction is also bad and ought to be set aside. *Rampini and Sharfudin J. J.*

BIPRA DAS ZERI v. NIRADAMONI BAWA, 12 C. W. N. 547.

Criminal P. Code S. 103.—*Construction—Burma Gambling Act 1 of 1899 S. 6.*—The real sense of the language used in sub-section 1 of s. 103 of the Cr. P. Code involves it being obligatory on an officer about to execute a search warrant to call upon and get two or more respectable inhabitants of the locality to attend to witness the search, before he does his first act under the authority of the warrant in entering the place to be searched, A house cannot therefore be deemed to have been "entered" under S. 6 of the Gambling Act unless the officer authorized by the warrant be accompanied by two respectable inhabitants of the locality within the meaning of S. 103 Cr. P. Code. (F. B.)

K. EMP. v. KWE SHAW—14, Bur. L. R. 81.

———**S. 106**—*Security to keep the peace—Unlawful assembly—Penal Code S. 143.*—An order under s. 106 of the Criminal Procedure Code upon a conviction under s. 143 of the Penal Code is illegal.

Rampini and Sharfudin J. J.

RAJ NARAIN ROY v. BHAGABAT CHUNDER NANDI, 35 Calc. 315.

———**S. 125, 107, 439.**—*Security to keep peace—Extent of District Magistrate's power to cancel security bond.*—Held, that the power conferred on a district Magistrate by Section 125 of the Code of Criminal Procedure, is not limited to cases in which the District Magistrate finds that a bond is no longer necessary but extends also to those in which he (the District Magistrate,) thinks that bond ought not to have been required; and for this purpose he has full discretion to consider the evidence and can set aside the order of security on the merits.

Reid J.

MUDITTIANAND v THE CROWN, 3 P. W. R. P. 25.

———**Fishery—Dispute relating to a fishery—Whether proceedings should be under s. 107 or s. 145.**—Where there is a *bona fide* dispute relating to a fishery right, the proper course for the Magistrate to adopt is to proceed under s. 145. Provisions of s. 145 are mandatory, while the language of s. 107 is discretionary. *Dolegobind Chowdhry v. Dhamu Khan*, 25 Calc. 559, followed.

Mittra and Fletcher. J. J

BALAJIT SINGH v. BHOJU GHOSE 35 Calc. 117.

———**Ss. 107 (3) and (4) 114.**—*District Magistrate ordering detention under 107 (4)—person not sent before him under s. 107 (8)—Jurisdiction*—Where the accused were not sent before the District Magistrate by any other Magistrate under s. 107 (3) of the Criminal Procedure Code, the case did not come under 107 (4) of the Code and the order by the District Magistrate detaining the accused in custody was made without jurisdiction.

Even if s. 36 of the Code can be construed as giving powers not specifically referred to in Sch. III of the Code, the power is not one which can vest in the Magistrate to whom the person is to be sent.

An order made according to the procedure of s. 107 (4) of the Code cannot be supported under s. 114 of the Code.

(Full Bench).

IN V, O. CHITHAMBARAM PILLAY, 3, M. L. T. 311.

———**Ss. 110, 111, 117, 197, 256**—*Security for good behaviour—Order embodying substance of information—Transfer—Refusal to recall prosecution witnesses for cross-examination—Limitation of time for examination of defence witnesses—Restriction of counsel's address—Right to cross-examine witnesses called by the Court—Evidence of general repute—Association with bad characters.*—The setting forth of the information received from a police officer in the order under s. 112 of the Criminal Procedure Code in terms of clause (a) to (f) of section 110 is a sufficient statement of the substance of the information as required by the former section. It is not necessary to give a list of the prosecution witnesses in such order. Section 192 cl. (1) is not restricted to cases of officers only, but is wide enough to include cases under Chapter VIII of the Code. Even if there was no power under the section to transfer such cases, the whole proceedings would not, by reason of s. 529 (f), be void. *Akbar Ali Khan v. Domi Lal*, 4 C: W. N. 821, followed. Section 256 of the Code does not apply to an inquiry under s. 117. The prosecutor and the accused are both equally entitled to a full cross-examination of witnesses called by the Court under s. 549 on matters relevant to the enquiry. The Court cannot restrict the cross-examinations of such witnesses by either party to the subjects on which it had examined them. Where an attempt was being made to protract the examination-in-chief of the defence witnesses to a most unnecessary extent so as to delay if not to prevent, the final termination of the case, and the address of the case, and the address of counsel had proceeded for fifteen days it was held that the Magistrate was not unreasonable in fixing a time limit for

the examination-in-chief of the remaining witnesses, and for the close of the address. In dealing with cases under chapter VIII of the Code the Magistrate ought, especially where no previous conviction is proved, to test the prosecution evidence with great care. Evidence of association with bad characters, who were always suspected of being concerned in dacoities and many of whom were doing the period of association bound down under s. 110 of the Code or convicted of dacoity and theft, at various times and especially in most cases shortly before, and near the place of, a dacoity, is a sufficient basis for an order under s. 110. Evidence of witnesses from villages where dacoities had occurred, but which were at some distance from the village where a person resided, as to his character in connection the dacoities, is admissible as evidence of general repute under s. 117 of the Code. *Isri Prasad*, 23 Cal. 621 followed

Rampini & Sharfuddin J. J.

CHINTAMAN SINGH, 35 Cal. 243.

————s. 133.—*Public Nuisance—Claim of title to land—Bona fide of claim—Limitation, question of.*—Where a party, against whom a conditional order s. 133 of the Criminal Procedure Code is passed for an alleged obstruction or nuisance on land, raises a claim of title to such land, the Magistrate must come to a proper finding as to the question of *bona fides* of the claim; and he is not competent to decide whether it is barred by limitation.

Rampini & Sharfuddin J. J.

KAMINI KUMAR BISWAS v. EMPEROR, I. L. R. 35 Calc. 283.

————ss 145, 369.—*Jurisdiction—Review.*—A Magistrate has no jurisdiction to review a final order passed by himself under s. 145 of the Criminal Procedure Code.

Rampini & Sharfuddin J. J.

PARBATI CHARAN ROY v. SAJJAD AHMAD CHOWDHURY 35 Calc. 350.

————s. 145.—*Title—Possession—Handing over profits to party.*—In a case under sec. 145, the Magistrate has no jurisdiction to enquire into the rights of parties. What he has got to look to is the fact of possession only.

A Magistrate in a case under Sec. 145 passed the following order:—
“I further order that if any fruit has been gathered on any of the said land attached by order of this Court, the proceeds of such fruit, minus expenses, shall be handed over to A.”

Held, there is no authority in sec. 145 or any other section to justify such an order.

Rampini & Sharfuddin J.

ARJU MEA v. ARMAN MEA 7 C. L. J. 369.

———s. 195—*Sanction to prosecute—Jurisdiction to grant or revoke sanction.*—Application was made under section 195 of the Code of Criminal Procedure to a Magistrate of the 3rd class, who tried the original case, for sanction to prosecute the complainant. This application was refused. A further application was then made to the District Magistrate, who granted sanction. *Held* that the Sessions Judge had no power set aside the order of the District Magistrate granting sanction.

Richards J.

RAM DENY V. EAND LAL RAI, 30 All., 109.

———S. 195—*Sanction to prosecute—Revision—Power of District Magistrate.* Application was made by an accused person who had been discharged to the trying Magistrate—a Magistrate of the first class—for sanction to prosecute the complainant under section 193 of the Indian Penal Code. That application was refused. The applicant then applied for sanction to the Magistrate of the District. On this the Magistrate of the District directed the prosecution of the complainant under section 211 of the Indian Penal Code. *Held* that the Magistrate of the District had no jurisdiction to pass such an order, either under section 195 or section 476 of the Code of Criminal Procedure.

Knox J.

MIHI LAL V. DARETI PRASAD, A. W. N., 1908, 74.

———Ss. 195 (b) and 476—*Sanction to prosecute—Instigating the chowkidar in lodging information—Sessions Judge's power to grant sanction—Penal Code sec. 211.* A chowkidar lodged an information at the thana of the murder of a girl. On the Police Report the Magistrate entered the case as false and declined to issue process against the accused and directed that the chowkidar alone should be first prosecuted under secs. 182 and 211 I. P. C. and not his instigators. On an application being made to the Sessions Judge with the view of obtaining sanction for the prosecution of the instigators, the Sessions Judge granted the sanction.

Held—That the Sessions Judge had no jurisdiction either under sec. 195 or 446 Cr. P. C. as the offence if any of the alleged instigators was committed by those persons before the Police and not before any Court or in the course of any judicial proceeding in any Court.

Rampini & Sharfuddin J, J.

DHARMDAS KEWAR V. THE EMPEROR, 12 C. W. N. 575 = 7 Cal. L. J. 373

———ss. 195-439—*Power of High Court—Order by Judge refusing to set aside an order sanction prosecution—Revision—Order not specifying the place or occasion of offence-defective.*—When a Sessions Judge

refuses to interfere with the order of a Magistrate sanctioning prosecution, the High Court has power to call for and examine the record and pass such orders as a Court of appeal could have passed under section 195 of the Code of Criminal Procedure. *Aikman, Karamat & Husain J. J.*

Serh mal v. Bacion Prasad 5 Al. L. J. 247 = 1908, A. W. N. 102 247.

————— ss. 4 (h), 196, 200—*Sedition—Government authority for prosecution—Sufficiency of authority—Complaint—Regularity of proceedings—Presumption of regularity of official acts—Evidence Act (I of 1872) s. 114—Re-publication of seditious articles—Penal Code (Act XLV of 1860) ss. 124 A, 499, Exception (4)—Printer, liability of—Act XXV of 1867, s. 7.*—Orders under s. 196 of the Criminal Procedure Code should be expressed with sufficient particulars and with strict adherence to the language of the section. But the real question in such cases is whether the prosecution was instituted under the authority of Government. An order purported to accord sanction to prosecute the editor, manager and the printer of a newspaper under s. 124 of the Indian Penal Code without specifying their names, and containing a misdescription of the seditious article. A police officer received it from the Commissioner of Police and under his directions applied for and obtained warrants from the Chief Presidency Magistrate against the accused. He was examined by the Magistrate, but not on oath, and his deposition was not recorded. On the day of the trial the same police officer filed an amended order under s. 196 of the Criminal Procedure Code correcting the error in the name of the article in the previous orders: *Held*, (i) that the prosecution was regularly instituted. (ii) That the order under s. 196 of the Criminal Procedure Code was not a "complaint" within s. 4 (h), but that the application of the police officer for warrants in respect of an offence under s. 124 A of the Indian Penal Code, coupled with his oral allegations, though not made on oath nor recorded, amounted, to a "complaint." *Queen-Empress v. Sham Lal*, 14 Calc. 707, followed. (iii) That the presumption under s. 114 of the Evidence Act supplied any omission either as to the method of the communication of the order to the prosecuting officer, or in the order-sheet of the Magistrate. (iv) That the article in question was incompatible with the continuance of the Government established by law, and was seditious. It is the duty of every citizen to support the Government established by law, and to express with moderation any disapprobation he may feel of its acts and measure. (v) That the re-publication of seditious articles from another newspaper, one of which only was filed as an exhibit by the prosecution and used in the case against the editor of that paper on his trial for sedition, was not a report of the proceedings of a Court of justice, and was

not justifiable under the circumstances (vi) That the presumption contained in s. 7 of Act XXV of 1867, in the absence of evidence to the contrary, rendered the printer liable for seditious matters published in his paper.

Caspersz & Chitty J. J.

APURBA KRISHNA BOSE v. EMPEROR, 35 Calc. 141.

———**Ss. 196, 537 (a), and 431**—*Absence of formal complaint immaterial—Accused when not prejudiced where trial concluded soon—High Court's power of Revision as regards finding on facts.* S, was prosecuted under section 505 P. C. on the strength of a letter from the Commissioner to the Deputy Commissioner conveying sanction of the Local Government under section 196; Criminal Procedure Code to prosecute S. and W. but no formal complaint was filed.

Held, that the proper and regular course to have been pursued undoubtedly would have been for the Deputy Commissioner either to have made a complaint himself before some other Magistrate or to have had complaint made by some person authorised under section 196 Criminal Procedure Code, to make the complaint; but his failure to do so was a mere irregularity cured by section 537 (a) of the Code.

Robertson & Kensington J. J.

SWAMIDYAL v. THE CROWN, 3 P. W. R. 30.

———**ss. 233, 234, 235**—*Misjoinder of charges—Distinct offences on different dates during same trial—Presidency Magistrates—Refusal to take oath or answer questions—Penal Code ss. 178 and 179.* Where the accused was charged under two heads, *first* with offence under s. 178 of the Penal Code committed on the 26th and the 29th August respectively; and *secondly*, with offences under s. 179 of the Penal Code committed on the above dates during the course of the same trial!—*Held per RAMPINI J.*, that the trial was under the special procedure provided for Presidency Magistrates, that no charge sheet was required to be drawn up, that there was no trial in the sense of an investigation of the facts, that the petitioner had been convicted only of three offences, two of which were of the same kind, and that s. 234 of the Criminal Procedure Code had not been contravened. *Subrahmania Ayyar v. King Emperor*, 25 Mad 61, distinguished, *Held*, further, that a Court acting under s. 482 of the Criminal Procedure Code is not bound to take proceedings on the same day, as it is when acting under s. 480. *Per SHAARFUDIN J.*, that the accused was not charged with, nor tried at one and the same trial for more than three offences of the same kind and that s. 234 did not, therefore, apply, but

that the case fell within s. 235, and that there was, therefore, no misjoinder of charges.

Rampini & Sharfudin. J. J.

BIPIN CHANDRA PAL v. EMPEROR 35 Calo. 161.

———**ss. 257, 537**—*Refusal of Magistrate to issue process to witnesses where none of the ground mentioned in s. 257 exists is illegal.* The refusal of a Magistrate to issue process to witnesses named by the accused, when such refusal, in regard to any particular witness, is not based on any of the grounds mentioned in section 257 of the Code of Criminal Procedure, is an illegality which cannot be cured by section 537 of the Code. A conviction under such circumstances is illegal and will be set aside. *Emperor v. Purushottam*, 26 Bom., 418, followed.

Miller & Munou. J. J.

NARAYANA MUDALI v. EMPEROR. 31 Mad 131.

———**ss. 337, 339**—*With drawal or revocation and forfeiture of pardon—When the question of forfeiture should be taken up and the approver tried—Impropriety of putting the approver back into the dock and committing him for trial in the same proceedings with his co-accused.* Held—That a pardon is forfeited by the approver's own act in concealing a material fact or giving false evidence; that if this is clearly established after he has been examined before the committing Magistrate it is not necessary that he should be examined as a witness in the trial, but that ordinarily proceedings against an approver who has forfeited his pardon should be taken after his co-accused have been tried.

To convict an approver on evidence taken before he was put back into the dock, is an irregularity calculated to prejudice him; and where the particular points which it was alleged that an approver had given false evidence and so forfeited his pardon were not clearly put before him, so as to give a fair opportunity of meeting the allegation. Held—that he was prejudiced in his defence

NGAPOHNAN v. EMPEROR 1908 (U. B. R.,) 17-10-07. = 7 Cr. L. J. 245;

———**Ss. 367, 424**—*Judgment of Appellate Court—Defective judgment—Appellate Court's—not supplementary to that of first Court.* The Judgment of an Appellate Court must show on the face of it that the case of each accused has been taken into consideration, and reasons should be given, as far as may be necessary, to indicate that the Court has directed judicial attention to the case of each accused. The appellate Court's judgment cannot be read in connection with, and as supplementary to, the judgment of the Court of first instance, but must be quite in-

dependent and stand by itself.

Caspersz & Ohitty J. J.

JAMIAT MULLICK v. EMPEROR, 35 Calc. 138.

———**Ss. 423 and 439**—*Conviction of two offences—Appeal—One of the convictions set aside—Sentence not reduced.* Where an appeal from a conviction for two offences, the conviction for one offence was set aside and that for the other retained.

Held, that to retain the same sentence in appeal amounts to enhance ment of the sentence and is contrary to law and the sentence should therefore be reduced. *Paramisiva v. Emperor*, 30 Mad., 44 followed.

White C. J. & Miller J.

RE SOMASUNDRUM, 3 M. L. T. 312.

———**ss. 435, 437, 439**—*District Magistrate cannot under s. 437 set aside an order of discharge on the ground that the lower Court had not appreciated the evidence properly.* Where a District Magistrate taking action under section 437 of the Code of Criminal Procedure comes to the conclusion that the evidence for the prosecution is reliable, and that the lower Court has erred in disbelieving such evidence and discharging the proper course for him is to refer the matter for orders to the High Court, which can deal with it under section 439. It is not open to him to set aside the order of discharge himself on the ground that the lower Court had misappreciated the evidence. *Queen-Empress v. Amir Khan*, (8 Mad., 377), followed. *Haredass Sanyal v. Saritulla*, (15 Calc. 621), followed. When a Court competent to decide whether the accused is guilty or holds that he is not guilty on a consideration of the evidence adduced by the prosecution, that finding should, if at all, be set aside only by a Court competent to set aside such finding of fact, that is by the High Court under section 439 of the Code of Criminal Procedure read with section 423.

Sankaran Nair J.

LAKSEMINARASAPPA v. MEKALA VENKATAPPA, 31 Mad., 133=3.
M. L. T. 231.

———**s. 437, 202, 204**—*Notice—Dismissal of complaint—Order of further inquiry without notice to the accused.*—*Held*, that no notice to the accused person is necessary where the Court of Revision acting under section 437, Criminal Procedure Code, directs further inquiry to be made into any complaint which has been dismissed under section 203, or Sub-section 3 of section 204 of the said Code.

Rattigan J.

CHANANSINGH v. THE CROWN 3 P. W. R. P. 25.

———**ss. 439—Revision—Practice—Discretion of Court as to entertainment of application in revision.**) Held that it is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. *Emperor v. Kali Charan*, Weekly Notes 1904, p. 233 and *Gullay v. Bakar Husain*, 28 All., 268, followed.

Knox J.

SHAFQAT-UL-LAH v. WALI AHMAD KHAN, 30 All 116.

———**ss. 476—Prosecution, order for—Indian Penal Code, ss. 114, 119, 193 and 210—Cognizance in the course of a judicial proceeding—Jurisdiction—Judicial proceedings—Execution proceedings** The powers conferred by section 476 of the Criminal Procedure Code can only be exercised if the offences in respect of which a prosecution is ordered have come to the cognizance of the Court in a judicial proceeding. Execution proceedings subsequent to the trial of a suit are not judicial proceedings. *Hara Charan Mookerjee v. Emperor*, 32 Calc. 367, followed

Rampini & Sharfudtn. J. J.

KANTGA RAM DAS v. GOBARDHAN DAS, 35 Calc. 133.

———**ss. 476—Prosecution for offence committed before predecessor in office—Practice.** The petitioner swore an affidavit, making certain allegations against a peon, in a suit pending in the Court of the Additional Munsif of R., who ordered an enquiry. On the transfer of that officer, the suit was made over to the 2nd Munsif, and the enquiry was continued by the 1st Munsif of the place who under section 476 of the Criminal Procedure Code ordered the prosecution of the petitioner for making a false affidavit:—*Held*, that the affidavit having been filed before the additional Munsif the 1st Munsif had no jurisdiction to make the order. *Begu Singh v. Emperor*, 34 Calc. 551, followed. *Runga Ayyar v. Emperor* 29Mad,331, not followed.

Rampini & Sharfudin.

KARTIK RAM BHAKAT v. EMPFOR, 35 Calc. 144

———**S. 476—Order for prosecution—Penal Code, sec. 211—False charge, laying of charge laid before the police report, directing charge as false—Judicial enquiry, order directing—Procedure.** A criminal proceeding was instituted by a person before the police who reported the case to be false, and the matter coming on before a Magistrate empowered to dispose of police reports he made an order making over the case to another Magistrate for judicial inquiry. This Magistrate after holding a

judicial inquiry as directed submitted a report, upon which the other Magistrate made an order to the following effect, viz.—“The complainant’s charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded with under sec. 211, I. P. Code” and upon prosecution of the complainant she was convicted under sec. 211 of the P. Code.

Held, that the offence of instituting a false complaint not having been committed before the Magistrate who ordered the prosecution of the petitioner was bad and contrary to law and the proceedings must be quashed.

Held also that the proper course, in such a case, should have been to direct the police to lodge a complaint. *Haibat v. The Emperor*, (1905) 33 Cal 20 followed. *Caspersz & Chitty J. J.*

ABDUL v THE EMPEROR, 7 C. L. J. 371.

———**SECS. 439, 476**——*Revision—Criminal cases—Sanction to prosecute—Powers of Chief Court when order of prosecution is passed by Revenue Civil Court.* It is competent to the Chief Court to revise under section 439 of the Criminal Procedure Code an order passed by any Court, Civil, Criminal or Revenue, either under section 476 of the Criminal Procedure Code. *Full Bench.*

BISHEN SINGH v. AMRITSARIA, 9 P. L. R. 317.

———**SEC. 488—‘May’—Discretion.** The use of the word “may” in sec. 488, Cr. P. C. shows that a Magistrate has a discretion to decide in what cases the award of maintenance may properly be made, though the discretion must be exercised judicially and reasonably and not capriciously.

Held also that the refusal to make an order for maintenance against the husband on the ground of the woman living in adultery with a low-caste man, was a proper exercise of the discretion vested in the Magistrate.

Benson & Miller J. J.

POUNAYU v. PERIYA MOOP PAN, 18 M. L. J. 150 = 3 M. L. T. 269.

Jury—Misdirection to—Confession—Evidence Act, ss. 27 and 30—*Confession of an accused person, which is not the immediate cause of the discovery of stolen property in the house of another accused cannot, under s. 30 of the Evidence Act, be considered as against such other accused—Statement made by a witness to a Police Inspector or to an investigating Magistrate who is not the Committing Magistrate, though in the presence of the accused, not admissible as evidence.*—Under sections 27 and 30 of

the Evidence Act, a confession made by one accused can be taken into consideration against another accused when such confession is the immediate cause of the discovery of some fact relevant as against such other accused; and a direction to the jury to take such confession into consideration, when it is not the immediate cause of any such discovery, is a misdirection; it is also a misdirection to ask the jury to take into consideration against the accused a statement made by a witness before a Police Inspector or before a Magistrate who, though an investigating Magistrate, is not the Committing Magistrate, when such statement is withdrawn before the Committing Magistrate and before the Court of Session.

Benson & Miller J. J.

SANKAPPA RAI v. EMPEROR 31 Mad., = 3 M. L. T. 270.

————— *Evidence act, Sec. 25 & 26—New trial ordered.*—Where a witness for the prosecution was allowed to give hear say evidence as to the guilt of one of the accused and statements made by the accused when they were in police custody were recorded as confessions and the jury was misdirected by being told that confessions to the police if followed up by the production of stolen property were admissible and the judge did not warn the jury to take the case of each accused separately and that a confession by one accused involving himself alone, could not be used against the other accused. Held that a new trial must be ordered.

Wallis & Munro J. J.

IN RE ACCHABRA 3 M. L. T. 263.

Kathiawar—Penal Code sec. 497, 498—Special rules passed in Malia State in 1878 for adultery and co-habitation with other's wife.—The special Rules (called the salmon Rules) passed in Malia state in 1878 regarding adultery and co-habitation with another's wife, do not oust the application of the ordinary criminal law, as they do not expressly exclude the right of an injured husband to make a Criminal complaint and seem to govern a civil plaint in order to save lengthy civil proceedings (which would tend to aggravate to create a breach of the public peace), and if their intention were, as the Rules say, to follow that procedure in all such cases, and to prevent a criminal complaint, it would be quite *ultra vires*.

MOWAR RAIMAL v. CROWN 17 C. L. R.

Penal Code ss. 28, 231—Counterfeiting coin—Definition—Intention. In order to constitute the offence defined by section 231 of the Indian Penal Code, it is not necessary that a counterfeit coin should be made with the primary intention of its being passed as genuine: it is sufficient

if the resemblance to genuine coin is so close that it is capable of being passed as such.

Bannerji & Aikman J. J.

EMPEROR *v.* QADIR BAKHSH, 30 All. 93.

———**Sec. 34—Common intention.** To render a person liable under sec. 34, the common intention must cover the act done by all the several persons.

Shaw J.

NGA TUN BOW *v.* EMPEROR, 7 Cr. L. J. 205, (U. B. R. Cr. 1907).

———**S. 62—Cases when forfeiture of property advisable.** Held that, sentence of forfeiture of the property of a criminal, under section 62 is not advisable in cases of private crime, but such like severe measures are justifiable only in the cases in which are omitted offences of a political nature against the State or affecting the safety of the public or some section of it.

Robertson and Kensington J. J.

MAGHARSINGH *v.* THE KING EMPEROR, 3 P. W. R. 26.

———**Sec. 75—Ten year's interval between previous and subsequent convictions for petty offences—Convict of advanced age.** Held, that sections 75 I. P. C. should not be applied mechanically in a case where the previous convictions for petty offences are 10 years old and the subsequent one is also for a very similar offence the convict has adopted regular work for earning his livelihood since his release from jail, is of advanced age and a large family depends upon him for support.

Sentence of seven years' transportation for life reduced to one year's rigorous imprisonment.

Kensington J.

KASIMALI *v.* THE CROWN, 3 P. W. R. 243.

———**ss. 99 147, —Entry on land in possession of another—Temporary occupation—Unlawful assembly—Private defence, right of ss. 99, 101, 104, 147.** The petitioners went with three ploughs on land to which the complainant had the right of possession, and of which he was in possession till such entry, and began to plough up the land, to uproot some castor plants and throw them away. while they were thus in actual but temporary occupation, the Complainant and his party went on the land and tried to unyoke the cattle, wherupon a riot took place:—*Held*, that the petitioners were not justified in entering on the land, in ploughing it, uprooting the plants and throwing them away, that they were members of an unlawful assembly the common object of which was to enforce a right or supposed right for the exercise of which they were prepared to use force and that their action in beating the complainant's party was not

justified by the fact of their having obtained temporary occupation. The right of private defence of property is a restricted one.

Mittra & Carpersz J J.

JAIRAM MAHTON v. EMPEROR 35Calc. 103.

———**Secs. 99, 147**—*Right of private defence—Time to have recourse to the public authorities—Person in possession of property—Rioting*
There is no right of private defence where there is time to have recourse to the public authorities.

When both parties arm themselves for a fight to enforce their right or supported right and deliberately engage in very large numbers in a pitched battle, killing one man and wounding others, the questions as to who began the attack and who were in possession of the property do not arise.

The law does not delegate to any private individual the functions of those public officers who are specially charged with the protection of life and property.

No one has a right to assemble in large numbers and court an attack by an opposing party. In such a case the right of private defence does not exist.

Rampini & Sharfuddin J. J.

KABIRUDDIN v. KING EMPEROR 7 C. L. J, 359=12 C. W. N. 379.

———**sec. 178**—*Refusal to give evidence on the ground of non-payment of expenses.*—A witness in a Civil case is entitled to payment of his expenses before he gives evidence. If he is not paid he is not bound to appear at all in answer to the summons, and it is no offence to refuse to give evidence on the ground of insufficient payment of expenses before the Judge has decided that the payment made was sufficient.

Shaw J.

NGA PYV v. EMPEROR 7 Cr. L. J. P. 208 (U. B. R. Cr.) 1907.

———**ss. 193**—*Prosecutions in alternative in respect of statements made under s. 164 of the Criminal Procedure Code and subsequently as a witness in Court Criminal Procedure Code, s. 164*—A complaint was made to the police charging T, S and a third person with having committed an offence under section 420 of the Indian Penal Code. During the investigation T was examined on oath by a Magistrate under the provisions of section 164 of the Code of Criminal procedure. As the result of the police investigation S was placed on his trial and T appeared as a prosecution witness and made a statement which ap-

peared to the Court to be contradictory of his statement previously made under section 164. *Held* that there was no legal objection. if the two statements were in fact contradictory, to the prosecution of T on a charge in the alternative under section 193 of the Indian Penal Code. *Queen-Empress v. Khem* 22 All., 115 followed. Knox J.

EMPEROR v. TASADDUK HUSAIN, A. W. N., 1908, 73.

———**S. 215**—*Object of*. S. 205 of the I. P. Code is not intended to apply to the actual thief. It means that any one who takes a gratification under pretence or on account of helping the owner to recover the goods, commits an offence at the time he takes the gratification; but he may condone the offence and avoid punishment by using all means in his power to cause the offender who took the property and convicted of the offence committed. F. B.

NGA TWET PE v. K EMP, 14 Bur. L. R. 97.

———**Ss. 361, 363**—*A female minor leaving parents as pre arranged of her own accord—Accused meeting and eloping*. Where a female minor, by the concerted arrangement with the accused left the house of her parents of her own accord intending not to return and went to the accused at a place appointed and eloped with him willingly.

Held, that the accused was an actual participator in the minor's leaving her parent's house and therefore was rightly convicted of kidnapping from lawful guardianship. Shaw J.

NGA TE HLA v. EMPEROR Cr. L. J. R. 210 (1907, U. B. R. Cr.)

———**sec. 326**—*Grievous hurt—Essence of offence—Jury—Verdict of "guilty but not voluntarily," meaning of—Sec. 338, conviction under—Causing grievous hurt by rash and negligent act—Criminal Procedure Code Secs. 237, 238.*—To constitute an offence under sec. 326 of the Penal Code, the act must have been done "voluntarily"—that is of the very essence of the offence.

When an accused person was charged with committing offences under secs. 304 and 326 of the Penal Code, and tried before a jury, and the latter found him not guilty under sec. 304, but returned a verdict of "guilty but not voluntarily" under sec. 326, and the Judge without asking the jury to explain the verdict discharged them and then convicted and sentenced the accused under sec. 338 of the Penal Code.

Held, that the verdict on the charge under sec. 326 was in effect a verdict of "not guilty" and the accused was entitled to an acquittal.

F. B.

THE EMPEROR v. KHUDURAM DASS 12 C. W. N. 530.

—secs. 379 and 430—*Theft of water running through an artificial channel—Mischief by causing adiminution of the supply of water for agricultural purposes—Bona fide claim of right, facts negating.*—Water running freely from a river through a channel made and maintained by a person cannot be the subject of theft (*Forens v. O' Brien* 11 Q. B. 21 distinguished). Where the accused took water that was running freely from a river through a pyne made and maintained by another for irrigation purposes and it was found that the accused were not acting under a bona fide claim of right and their act caused adiminution of the supply of water for agricultural purposes,

Held—That the accused committed an offence under sec, 430 I. P. C. even though there was no evidence to prove that the accused knew at the time they took the water that any lands were being actually irrigated with the water of the pyne,

Held further (*Woodroffe J. dubitantes*)—That under the circumstances of the case and having regard to the history of the pyne, the accused were not under a bona fide belief that they were entitled to take the water.

Geidt and Woodroffe J. J.

EMPEROR V. SHEIKHARIFF, 12 C. W. N. P. 584.

—secs. 417, 511—*Attempt to cheat—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of.*—Where A falsely representing himself to be a member of the firm of B, which firm were clients of a pleader C, went to the pleader and instructed him to write a letter on behalf of B, cancelling a certain contract and where C wrote the letter but instead of dispatching it to the addressee sent it to B's shop where the fraud was discovered. Held, the despatching of the letter would have caused injury to the pleader in mind and reputation, he would certainly have been likely to lose reputation, and perhaps business, if it appeared that he had been negligent and had been readily deceived. Held, therefore, that A—was rightly convicted of attempt at cheating. The prosecutor in all Criminal cases is really the crown; the complainant merely sets the machinery of the Court in motion. In a case of cheating, it is not necessary that the complainant should have been the person deceived.

Rampini & Sharfuddin J. J.

MAHADEO LAL KING EMPEROR 7 C. L. J. 375.

Workmen's Breach of Contract Act (Act XIII of 1859), sec. 2.
Jurisdiction of Magistrate to order delivery.—*Held* that under sec. 2 of Act XIII of 1859, a Magistrate has no power to order delivery of a jewel contracted to be made.

Munro & Sankaran Nair J. J.

MUNUSWAMI V. STRINIVASUBE 3 M. L. T. 292,

DIGEST OF INDIAN (CRIMINAL) CASES.

Arms Act, 1878, s. 22.—*Scope of—Delivery of gun to servant.*
Section 22 of the Indian Arms Act, has no application where a master delivers a gun to his servant in order that the latter, though not licensed under section 13, may shoot with it. The word "possession" in the former section means something different from the mere control which is devolved by such delivery,

EMPEROR V. MUKUNDA, 4 Nag. L. R. 78.

Boiler Inspection Act, (2 of 1891) sec. 29 (1), (b)—*Meaning of "indirect and immediate management and charge."* The words "indirect and immediate management and charge," in sub-section (1) (b) of section 29 of the Bombay Boiler Inspection Act II of 1891, (as applied to Berar) explained. It is a question to be decided from the circumstances of each case whether the Engineer can be said to have been indirect and immediate charge of the boiler, and the words do not necessarily mean that the Engineer is to have his eyes fixed on the boiler all day.

EMPEROR V. RANU BEHARILAL IV N. L. R. 95.

Burma Gambling Act, (1897), sec. 6—*Search—Entry—Presumption from discovery of the tenants of gaming common gaming house list of things seized in search—Criminal Procedure Code, 1898, s. 103.*
No presumption arises under sec. 7 of the Burma Gambling Act unless the search, as well as the entry, is made in accordance with the provisions of section 6, and consequently in accordance with the provisions of sections [102 (3) and 103 of the Criminal Procedure Code. Where a list of articles seized in a house entered under section 6 of the Gambling Act was written on three sheets of paper, the first of which only was signed by the witnesses, it was held that only the articles mentioned on the first sheet had been seized in accordance with the provisions of sec. 103 of the Criminal Procedure Code, and as no instrument of gaming were mentioned in that sheet, it followed that no instrument of gaming had been seized at a search made in accordance with the provisions of section 6 of the Gambling Act, and that therefore the presumption provided for in sec 7 did not arise.

Ormond J.

ANA DEWA SING V. EMPEROR, 4 L. B. R. 134=7 Crim. L. J. 411.

Criminal Procedure Code—Jurisdiction—Security to keep the peace—

District Magistrate—Appellate Court power of, to direct security to keep the peace—conviction by a second or third class Magistrate. An appellate Court cannot exercise the power given by section 106 (3) of the Criminal Procedure Code, where the conviction has not been by a Court specified in sub-section (1),

Rampini & Sharfudin J. J.

EMPEROR v. MOMIN MALIATA, 35 Calc. 484=7 C.L.J. 602=12 C.W.N. 752.

———s. 118—*Surety. Fitness of—Inability to control person bound down.* The test of the fitness of a surety is not whether he can supervise the person bound down, but whether he is a person of sufficient substance to warrant his being accepted. *Abinash Malaker v. Empress.* 4 C. W. N. 797 *Ram Pershad v. King-Emperor*, 6 C. W. N. 563, followed. *Queen-Empress v. Toui* (1895) All. W. N. 143 and *Queen-Empress v. Rahim Baksh* 20 All. 206, dissented from.

Rampini & Sharfudin J. J.

ADAM SHEIKH v. EMPEROR, 35 Calc. 400.

———section 123 (and 2), 397—*Detain in custody—failing to give security—Nature of imprisonment—Second sentence—how to be carried into effect.*—The words "committed to prison" used in section 123 (1), Code of Criminal Procedure, 1898, are equivalent to a sentence of imprisonment, and do not merely mean committed to custody. The words, "detained in prison," in sub-section (2) have also a similar meaning.

A person failing to give security for his good behaviour is liable to imprisonment and the imprisonment takes effect from the day on which the warrant of the Magistrate directing detention in prison has been executed.

I was required to furnish security to be of good behaviour or be rigorously imprisoned for three years. The order was submitted to the Sessions Judge, and I was ordered to be rigorously imprisoned, pending the order of the Sessions Judge. In the meantime I was convicted for another offence by another Magistrate. Held, that the former sentence should be carried out first.

(Full Bench)

KING EMPEROR v. JULAKHAN 5 A. L. J. R. 318=1908 A. W. N. 133.

———ss. 118, 129, 350.—*Security proceedings—preventive sections—order on evidence recorded by predecessor security for more than one year—submission of proceedings to Sessions Judge—order of Sessions Judge—period of imprisonment in default of security.*—When a Magistrate makes an order under section 118 of the Criminal Procedure Code requiring an accused person to give security for more than one year, the Magistrate himself has no power to pass any order for imprisonment in default of the security being given. He can only issue a warrant for the detention of the accused pending the orders of sessions Judge.

The proceedings in such a case are not laid before the Sessions Judge for confirmation of an order but for the purpose of his passing an order himself under section 123 (3) of the Criminal Procedure Code. The period for which imprisonment in default of giving security is ordered must coincide with the period for which security is demanded.

Fox C. J.

EMPEROR v. MYATAUNG=4 L. B. R. 135=7 Crim. L. J. 412.

—————**Sec. 133—Procedure—Obstruction to public way—Jury**—Where, at the request of a person upon whom a notice has been served under section 133 of the Code of Criminal Procedure a jury is appointed under section 133 of the Code, it is within the competence of the jury to decide as to the validity of an objection that the way alleged to have been obstructed is not a public way. It is not for the Magistrate to decide whether such an objection is raised *bona fide* before referring it to the jury.

Held also that there is no special procedure laid down by the Code to be adopted by a jury appointed under section 133 in coming to a finding on the questions submitted to them. *Queen-Empress v. Khushali Ram* (1. L. R., 18 All. 158) referred to.

Held also that a person who has applied for a jury under section 138 is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bona fide* claim of right. *In the matter of the petition of Lachman* (Weekly Notes 1900, p. 180) followed.

Knox J.

EMPEROR v. RAM BILA, A. W. N., 1908, 151.

—————**sec. 145—Trial as in a civil suit—settlement proceeding, order in, if to be given effect to.**—The Magistrate should not deal with a proceeding under sec. 145, Cr. P. C., as if it is a civil suit.

Where the Magistrate tried a case under sec. 145, Cr. P. C., as if it was a civil suit, framed several issues and discussed them at length, but did not deal with the question of possession except that in only one passage in his judgment he observed that the oral evidence as to actual possession was in favour of the second party but in his final order declared the first party to be in possession in order to give effect to a certain order of the settlement department,

Held—that the Magistrate's order was without jurisdiction. The only question the Magistrate had to decide in the case was who was in actual possession of the land in dispute and as he had not done so, his order was entirely without jurisdiction.

Rampini & Sharfuddin J. J.

KOCHAI FAKIR v. ROMESHCHANDRA BISWAS, 12 C. W. N. 773.

———**Sec. 145**—*Omission to examine witness and inquire into the question of possession—Absence of a party—Signature of the judicial officer in a judicial order.*—Where in a proceeding under sec. 145, Cr. P. C., one of the parties being absent though served with notice, the Magistrate on the written statement of the other party declared them to be in possession, Held—That the order of the Magistrate was without jurisdiction. It was his duty to inquire into the question of possession and in the absence of the parties, he would have been well advised to abstain from passing any order under sec. 145, Cr. P. C.

A Magistrate should sign his name in full in a judicial order made under sec. 145 Cr. P. C. and should also note his official position.

Rampini & Sharfuddin, J. J.

NOJEW MIRDHA, v. JAMALOLI KHATIFA, 12 C. W. N. 771.

———**s. 190**—*Power of Magistrate to order prosecution of offender not arrested by police—first information report—final report*—In a case sent up by the Police, the Magistrate acquitted the accused, but ordered that another person should be sent up for trial. The Magistrate was not empowered under section 190 (1) (c) of the Criminal Procedure Code to take cognizance of offences of his own motion. Held, that the Magistrate, although not so empowered, was competent to order the prosecution of any person implicated on receipt of the first information report from the Police and a *fortiori* after having received the final report and having himself examined witnesses.

Irwin J.

HAKIMA ALLI v. EMPEROR 4 L. B. R. 137 = 7 Crim. L. J. 414.

———**s. 195**—*Application for sanction to prosecute—Dismissal of the application for default—Appellate Court cannot grant on appeal—Dismissal of application for default not permissible—Review of order not permissible under the Code.* An application was made by the Public Prosecutor of Beigam to the Subordinate Judge of Gokak for sanction to prosecute one G for offences committed in his Court. The Public Prosecutor failed to appear in the Court on the day and at the hour fixed for the hearing of the application. The Subordinate Judge dismissed the application as for default. On an application being made to review this order, the Subordinate Judge declined to do so. On appeal, however, the District Judge granted the sanction under sec. 195 of the Criminal Procedure Code of 1898).

Held that the District Judge had no jurisdiction to accord the sanction on appeal, under section 195 of the Criminal Procedure Code inasmuch as there was no sanction given or refused by the Subordinate Judge. The only jurisdiction which the District Judge had under the circumstances was to

revise the order passed by the Subordinate Judge dismissing the applications as for default.

Held, further, that there was no provision in the Criminal Procedure Code which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. The Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court.

Held, also, that Subordinate Judge had no power to review his order because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it.

Chandavarker & Knight J. J

IN RE GOPAL SIDDESHWAR. 32 Bom. 203.

————s. 195, 476—*Indian Penal Code secs. 193, 210—Sanction to prosecute—Refusal by Subordinate Judge District Judge on appeal may institute proceedings under sec. 476—Court—Interpretation.*) An application was made to a Subordinate Judge for sanction to prosecute *L* for offences punishable under sections 193 and 210 of the Indian Penal Code. The Subordinate Judge refused to grant the sanction. On appeal, the District Judge varied the order and directed the lower Court to prosecute *L* for an offence under section 210 of the Indian Penal Code.

Held, that the District Judge had jurisdiction to pass an order under section 476 of the Criminal Procedure Code; that it was not competent to him to direct the Subordinate Judge to prosecute *L* for an offence under section 210 of the Indian Penal Code and that he should himself have proceeded according to clause (b) of section 195 read with section 476 of the Criminal Procedure Code.

The word "Court" in section 476 of the Criminal Procedure Code includes within its scope the other Courts to which such Court is subordinate referred to in section 195 of the Code. *Begu Singh v. Emperor* 34 Cal. 551, dissented from.

Chandavarkar & Knight, J. J.

IN RE LAKSHMIDAS LALJI, 32 Bom. 184.

————s. 198—"Person aggrieved"—*Bigamy—Complaint by a brother of the husband—Penal Code, s. 495.*) *Held*, that a brother of the husband of the woman who committed bigamy is not as such, a person aggrieved within the meaning of s. 198 Criminal Procedure Code upon whose complaint the Court could take cognizance of an offence of bigamy.

Evans J. C.

HANUMAN V. KING-EMPEROR (11 O. C. 148.)

———**Sec. 108—Penal Code Sec. 500—Defamation—Termination of prosecution on death of complainant.** The death of the complainant during the course of criminal proceeding for defamation has the effect of terminating those proceedings. I. L. R. XXXI Calc 993 (F. B.) referred to.

Clark C. J. & Reid J.

IBHAR DAS v. THE KING EMPEROR, 9 P. L. R. 353.

———**ses. 202—“Accused” who is—right of person complained against to intervene if no process is issued.** A person against whom a complaint is preferred does not become an “accused person” for the purposes of section 340, Code of Criminal Procedure, until the Magistrate acting under chapter XVI of the Code has decided to issue process against him. Consequently he is not entitled to intervene in a preliminary inquiry held under sub-section (1), section 202 as if he were a party to the proceedings, though he may, if he chooses, watch them like any other member of the public.

SHEIKH OBTND v. MAHOMED HANIF, 4. Nag. L. R. 81.

———**234, 235—Charge—Misjoinder of charges—Illegality.** An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and, secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. Held that this was an illegality not covered by the provisions of section 537 of the Code of Criminal Procedure.

Knox & Aikman J. J.

EMPEROR v. MATA PRASAD, A. W. N., 1908, 152.

———**Sec. 239—Joint trial—Irregularity if fatal.** The joint trial of several offenders, except in cases strictly covered by section 239 of the Code of Criminal Procedure, is fatal to the validity of the trial.

EMPEROR v. BALWANTSINH, 4 Nag. L. R. 71.

———**s. 350 and 528—Transfer—Magistrate—Succession of Magistrates—Transfer of case from one Magistrate to another—De novo trial—Practice.** Section 350 of the Criminal Procedure Code is not limited to cases in which Magistrates succeed each other in their offices, but applies also to all cases transferred from the file of one Magistrate to that of another under section 528 of the Code. *Deputy Legal Remembrancer v. Upendra Kumar Ghose*, 12, *In re Raghoo Parsaraj*, 19 W. R. Cr. 28, *Damri Phakur v. Bhowani Sahoo*, Calc. 194, *Queen-Empress v. Bashir Khan*, I. L. R. 14 All. 346, distinguished, *Queen v. Hurnath Guho Thakurta*, 24 W. R. Cr. 52. *Queen-Empress v. Angnu*, (1889) All. W. N. 180 not followed.

Rampini & Sharfudin J. J.

MOHESH CHANDRA SAHA v. EMPEROR, 35 Calc. 457 = 7 C. L. J. 488.

———s. 526, 145—*Transfer of Case under Section 145—Criminal Procedure Code—“Criminal Case.”* Held. that proceedings under s. 145 of the Code of Criminal Procedure are “Criminal cases” within the meaning of the words as used in s. 526 of the Code and therefore s. 526 applies to such proceedings. (*Arumuga Tegundan* 26 Mad. 188. followed.)

Greeven J. C.

SARDAR KARAM SINGH v. L. HEARSEY (11 O. 61).

Excise Act, (No. XII of 1896) s. 44 (2), 48 and 57—Definition Excise Officer—Jurisdiction. Held, that a head constable is an Excise officer within the meaning of section 57 of the Excise Act, 1896, *Queen-Empress v. Makunda* (20 All. 70) followed. *Knox & Aikman. J. J.*

EMPEROR v. LACMI NARAIN, A. W. N., 1908. 157.

Jury—Charge to the jury—Misdirection—Culpable homicide—Omission to ask the jury to consider the intention or knowledge of the accused—Omission to tell the jury to consider the question of alibi—Facts, expression of Sessions Judge's opinion on first information—omission to place before the jury—Indian Penal Code, secs. 304, 304/148, 147. Where the Sessions Judge in his charge to the jury observed that the jury in dealing with a charge of culpable homicide had to consider whether a man was dead and whether he met with a violent death and whether the accused had any hand in causing the death but he did not specifically ask the jury to consider whether in causing the death or such injury as was likely to cause death or the knowledge that he was likely to cause death.

Held—That this was a very material misdirection and the misdirection was not cured by the fact that the Sessions Judge in the first part of his charge explained the sections of the Penal Code defining murder and culpable homicide and pointed to them the distinction between the two.

Where the accused pleaded alibi and the Sessions Judge in the beginning of his charge to the jury referred to the plea of the accused but omitted all the reference to it in the subsequent part of his charge.

Held—That this was a misdirection, the Sessions Judge ought to have told the jury that before they could convict the accused they must find that the accused were present at the occurrence.

When the Sessions Judge in his charge to the jury expressed his opinion on various questions of fact arising in the case without telling the jury that his opinion was not binding on them and that they were the sole judges of fact.

Held—That the charge was unsatisfactory. The Sessions Judge was not justified in his charge to the jury in making comments on the first in-

formation without placing it as a whole before the jury.

Geidt & Woodroffe J. J.

NATOBAR GHOSH v THE KING EMPEROR, 12 C.W.N. 774=7 Calc., L. J. 599.

Letters Patent (Amended), 1865, cl. 26—*Criminal Procedure Code (Act V of 1898), sec. 162—Bombay City Police Act (IV of 1908), sec. 63—Indian Evidence Act (I of 1872), secs. 2 and 167—Statement made by a witness to and taken down in writing by a Police officer—Admissibility in evidence—Confession of accused, admissibility of.*—One P., an entry clerk in the General Post Office, Bombay. was charged with having committed theft in respect of a registered letter, S., a friend of the accused, had made a statement to a Police Officer which the latter had taken down in writing. At the trial S. denied having made the statement whereupon the Presiding Judge admitted the statement in evidence to discredit S. and also as evidence against P. in that it contained statements made to the Police corroborating confessions made by P. These confessions were also used in evidence against P. On the application by P.'s Counsel the Advocate General certified under clause 26 of the Amended Letters Patent that the said document was wrongly admitted. On a review by the Full Bench.

Held, having regard to section 162 of the Criminal Procedure Code the said document ought not to have been admitted or used in evidence against the accused

The question was also raised by Counsel for the Crown whether under clause 26 of the Letters Patent the Court had power to review the case only *qua* the wrongly admitted evidence or had power to review all the rest of the case.

Held by Russell, Ag. C. J. Chandavarkar and Batty, JJ. (Davar and Beaman, JJ. dissenting) that the Court has power to review the whole case.

Per Davar, J. :—Under clause 26 the Court is at liberty to review the case or part of the case for the purpose of determining the point or points of law which are either reserved for its opinion or certified by the Advocate General to be wrongly decided. It is not open to the Court in review to go behind the record of the case and enter into an elaborate investigation as to whether each particular piece of evidence recorded by the Judge was or was not rightly admitted.

Per Beaman, J. :—If the party did not object, did not ask for a certificate in respect of evidence which is challenged for the first time after the trial at the hearing before the Court of Reference, the objection comes too late.

EMPEROR v. NARAYAN RAGHUNATH PATKI (1907) 32 Bom. 111,

N. W. P. Municipalities Act (1 of 1900) s. 168. 121—*Order to Vacate Land Conviction on Failure to Comply with—Daily fine, legality of. Held*, that section 161 of the N.-W. Province and Oudh Municipalities Act (1 of 1900) does not authorize the imposition of a daily fine.

Chamier & Evans. J. C.

RAM JAS V. MUNICIPAL BOARD LUCKNOW. 11 O. C., 121.

———**s. 132 and 147 and Rule (2) of s. 128 and 132—***Conviction for failure to Remove Certain Building—Sentence of daily fine on second conviction for failure to remove the structure—Prospective fine. Held*, that the imposition of a prospective fine is illegal.

Held further, that the words "first conviction" in sections 132 and 147 of the N. W. P. and Oudh Municipalities Act make it clear that the Legislature contemplated a conviction for an original offence or disobedience or a lawful order and subsequent convictions for a continuation of or persistence in an original offence or disobedience. (*Sri Dhar v. K. E. 8 O. C. 249* explained and dissented from.

Chamier & Evans. J. C.

MAHADEO PERSHAD V. MUNICIPAL BOARD. 11 O. C. 122.

Penal Code. s. 96-106—*Private defence, right of—Common object as found by Trying and appellate Courts.* No right of private defence arises where a large body of men go armed and prepared for a fight, and attack the opposite party with intent to enforce their right or supposed right to certain land. The petitioners numbering from forty to sixty, armed with lathis, spears and heavy billets of wood, preceeded to the dieputed land. attacked the complainant and his father, and destroyed the crops growing thereon. Both parties claimed the land as having fallen to their shares on partition. The Magistrate found that the complainant was in possession and had grown the crops:—*Held*, that the right of private defence did not arise, as there was no invasion of the petitioner's rights on the day of occurrence, and, in any case, that they had ample time to have recourse to the authorities for the protection of their rights. Where the accused were charged with rioting with intent to dispossess the complainant, but the Appellate Court thought the question of possession not clear and found them guilty of rioting with the intention of enforcing their right or supposed right:—*Held*, that both common objects raised the same questions, and that the accused were in no way prejudiced.

Rampini & Sharfudin. J. J.

MANIRUDDIN V. EMPEROR, 35 Calc. 384.

———**Sec. 96 to 106—***Private defence, Right,—Assembly of armed men prepared for fight—Misdirection to Jury.* There is no right of private defence where two parties arm themselves for a fight to enforce their right or supposed right, and deliberately engage in large number in a fight. In such a case, if it is not shown that the accused were acting within the legal limits

of the right of private defence, it does not matter which party was the first to attack. *In re Kalee Beparee*, 1 Q. L. R. 521, and *Jairm Mahton v. Emperor*, 35 Calc. 103, followed. *Rampini & Sharfudin. J. J.*

KABIRUDDIN v. EMPEROR, 35 Calc. 368.

———**Ss. 96 to 106, 147, 325/149.**—*Private defence, right of—Rioting—Attack by a large body of armed men prepared to fight.* The complainant's party, consisting of twelve or thirteen persons, went with *kodalis* to a *bund* erected on the land of the master of the accused in order to cut, as it obstructed the flow of water from their lands and destroyed their crops. The accused hearing of this at once assembled to the number of 50 or 60, armed themselves with *lathis* and proceeded to the *bund*. At this time the complainant's party had either finished the cutting or ceased to do so, when they saw the accused approaching. The latter attacked the complainant's party and drove them to their village. One or more of the assistants also beat a man, who was not connected with the cutting of the *bund*, both in the first attack and when they returned from the chase, and fractured his skull, in consequence of which he died shortly after.—*Held* that the accused were members of an unlawful assembly from the beginning, as they armed with *lathis* and in large numbers to enforce their rights at all hazards, that if not so at the beginning, they became an unlawful assembly, and had no right of private defence, when the opposite party had ceased cutting the *bund*, and that, even if they had, they exceeded their right by attacking opponents and chasing them and beating the deceased. *Shunker Singh v. Burmah Mahto*, 23 W. R. Cr. 25. *Pachkauri v. Queen Empress* 24 Calc., 686 distinguished. *Kabiruddin v. Emperor*, 35 Calc., 368 followed. *Rampini & Sharfudin J. J.*

EMPEROR v. AMBIKA LAL, 35 Calc. 443.

———**Ss. 225, 253, and 379**—*Rescue from lawful custody—Assault to deter public servant from duty—Arrest by duffadar for theft not committed in his presence—Theft whether a continuing offence—Village Chaukidari Act, (Beng. VI of 1970) s. 39, cl. (2)* The arrest by a *duffadar* of a person for theft on complaint made by him, but not committed in his presence, is illegal under sec. 39 (2) of Bengal Act of VI of 1870; and neither the rescue of such person from his custody nor the threat to beat him does amount to any offence under sec. 225 or s. 353 of the Penal Code. The offence of theft is not a "continuing" one.

Rampini & Sharfudin J. J.

BOLAI DE v. EMPEROR, 35 Calc. 361.

———**sect. 273**—*Food—Sale of food unfit for use by human beings—Sale for animals.*—*Held*, that section 273 of the Indian Penal Code

does not make sale as horse's food of grain or fodder, unfit for a horse to eat, an offence punishable under the section. The word "public" in Chapter XIV of the Code means human beings in general and does not include animals.

Reid J.

SITARAM v. THE CROWN IX P. L. R. 423.

——— **ss. 379, 430.**—*Theft—Mischief—Running water—Cutting embankment of channel and diverting running water*—Where the accused cut the embankment of a *pyne* and drew the water to their own lands and were convicted of theft and mischief under ss. 379 and 430 of the Penal Code:—*Held*, that running water not reduced into possession could not be the subject of theft. *Per Geidt J. (Woodroffe J. dubitante)* that the cutting of the embankment constituted an offence under s. 430 of the Penal Code. *Ferens v. O'Brien*, 11 Q. B. D. 21 distinguished.

Geidt & Woodroffe J. J.

EMPEROR v. SHEIKH ARIF 35 Calc. 437.

——— **Sec. 411**—*Thief himself cannot be convicted under sec. 411.* No disposal of stolen property by a person who is found at the trial to be original thief, can be made the basis of his conviction under section 414, Indian Penal Code.

EMPEROR v. BALWANT SINGH, 4 Nag. L. R. 71.

——— **s. 477 A.**—*Falsification of Accounts—Intention to defraud—False entries made to conceal previous embezzlement*—The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477A of the Penal Code, inasmuch as the intention is to defraud. *Lalit Mohan Sarkar v. Queen-Empress*, 22 Calc. 313. *In re Annasami Ayyangar*, 1 Weir 554 followed. *Empress v. Jiwanand* 5 All. 221, *Queen-Empress v. Girdhari Lal* 8 All. 653 and *Abdul Hamid v. Empress*, 13 Calc. 349, dissented from.

Geidt & Woodroffe J. J.

EMPEROR v. RASH BEHARI DAS, 35 Calc. 450.

Police Act (V of 1861) ss. 17, 19.—*Special Constables—Grounds of appointment*—The circumstances, which justify an order under s. 17 of the Police Act (V of 1861), are that a disturbance of the peace is apprehended, and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place, where the disturbances are apprehended. Where upon the report of a Sub-Inspector of Police that there was a dispute about certain land, in which the petitioners were concerned, which was likely to lead to a breach of the peace, the Magistrate appointed them special constables under s. 17 of Act V of 1861, and they refused to receive their letters of appointment, but were afterwards told that their services would not be necessary:—*Held*, that the order of appointment of the petitioners under s. 17 and their convictions under s. 19, were illegal.

Rampini & Sharfuddin J. J.

NANDA KISHORE SINGH v. EMPEROR, 35 Calc. 454 = 12 C. W. N. 727.

Practice—Retrial on the ground of misjoinder—The duty of an Appellate or—Revisional Court, as to ordering the retrial of a person, whose conviction has been set aside by such Court on the ground of irregularity in his trial, discussed.

EMPEROR v. BALWANT SINGH 4 Nag. L. R. 71.

———*Proof of previous connection—Finger prints—finger impression slip—proof of previous conviction—identification certificate of officer in charge of finger print Bureau—admissibility in evidence.*—The accused was charged with theft after three previous convictions under Chapter XVII of the Indian Penal Code. To prove these convictions which the accused denied, certain "Finger Impression Slips" were produced, together with statements signed by the officer in charge of the Finger print Bureau to the effect that the impressions appearing thereon were those of the person against whom the specified convictions had been had. An officer of the Finger print Bureau took impressions of the accused's fingers in court and identified him as the person whose finger prints appeared on the "Finger Impression slips."

Held, that the previous convictions of the accused stated on the slips were not proved merely by the production of such slips.

Fox J.

HULOST v. EMPEROR. 4 L. B. R. = VII Crim. L. J. 406.

Prosecution—Abatement of—Defamation—Abatement of prosecution on the death of complainant—Held, that, the death of the complainant during the Course of Criminal Proceedings for defamation necessarily terminates these proceedings.

Clarke C. J. & Reid J.

ISHAR v. EMPEROR 3 P. W. R. 21.

Revision—Duty of High Court in revision—omission to examine the accused—It is not imperative on the High Court to set aside every void order that comes to its notice, when the person aggrieved does not move the court to do so.

Where certain persons were convicted without being duly examined under section 342 of the Criminal Procedure Code, but it nevertheless appeared from the record that they had not been prejudiced by the omission, and they had not appealed although an appeal lay,

Held,—that though the conviction was bad it was not necessary for the High Court to set it aside.

Irwin J.

EMPEROR v. BAFE AND OTHERS 4 L. B. R. 143 = VII. Crim. L. J. R. 422,

DIGEST OF INDIAN (CRIMINAL) CASES.

Arms Act (XI of 1878) S. 13—Arms—Going armed without a license—Acquittal—Appeal against—Disposal of confiscated arm. Since the word "arm" includes the words "parts of arm" with the meaning of S. 4 of the Arms Act a revolver clogged from disuse falls within the definition. On conviction dangerous weapons should not be sold by auction and care should be taken in orders of the kind to avoid risk of dangerous weapons passing into improper hands.

The Chief Court set aside on appeal the acquittal of the accused of an offence under S. 13 of the Arms Act. *Robertson & Kensington J. J.*

THE CROWN v. SAMIULLAH, 9 P. L. R. 445.

Bombay District Municipal Act—III of 1901—Sections 122 and 161—Prosecution launched without sanction of the Municipality—legality of—offence falling under two clauses—applicability of—Held, (1) Section 161 of the Bombay District Municipal Act merely empowers the Municipality to expend Municipal funds on prosecutions for Municipal offences, but neither this section nor any other section of the Act either directly or indirectly takes away the power of the members of the public, having knowledge of the commission of an offence, to set the law in motion by a complaint. And though it may be desirable that a Municipality should not delegate to its Secretary, a general power to prosecute people, a conviction based on such a prosecution is not thereby rendered illegal.

(2) The offence of building a landhi on a public road without permission falls under the perview both of clauses 1 and 3 of section 122 of the Act—the wording of clause 1 being more specific than that of clause 3 the accused should be convicted under clause 1 and not under clause 3 of section 122 of the Act. *1 Sind L. R. 188.*

IMPERATOR v. HASOMAL wd SHAMDAS 88.

Bombay Village Police Act (VIII of 1867) Ss. 6, 14—Police Patel—Judicial proceedings before the Police Patel—District Magistrate's power to transfer the case to another Court—Transfer of case—High Court—Superintendence—Letters patent, cls. 26, 27. The duties which are enumerated in S. 6 of the Village Police Act, 1867, are the executive duties of the Police Patel. They are duties imposed upon him quite independently of the authority which he has given to him under S. 14 to try and punish

in cases of petty assault and abuse. The authority given to him by S. 14 is a judicial and not an executive authority. S. 6, therefore, does not justify the District Magistrate in stopping the judicial proceeding which is already in progress before the Police Patel.

Apart from the power expressly conferred by the Act upon the Magistrate in that connection the only right of superintendence over the judicial functions of the Police Patel created by the Village Police Act, is vested in the High Court by clauses 26 and 27 of the Letters Patent.

Scott C. J. & Knight J.

In re DAYAL KANJI, 10 Bom. L. R. 630.

Burma Lower Village Act, 1889. S. 9 (2)—*Refusal or neglect to comply with requisition of headman—Order of headman—Failure to pay revenue demanded criminal offence—Burma Land Revenue Act, 1876.* The accused were ordered by the headman of their village on the request of the circle thugyi to pay their capitation-tax at a certain place. This they failed to do and they were consequently convicted under S. 9 (2) of the Lower Burma Village Act, of having neglected to comply with the headman's requisition.

Held, that the provisions of this section do not apply to the failure of a villager to pay revenue demanded from him, the coercive procedure for enforcing payment being prescribed in the Land and Revenue Act. *Irwin J.*

EMPEROR v. LU PE, 4 L. B. R. 150 = 7 Cr. L. J. 450.

Criminal Procedure Code, S. 75 and 204. *Cancellation of warrant Discretion.*—Where a Magistrate has issued a warrant against the accused in the first instance, he can in exercise of his discretion vested in him by section 204, Criminal Procedure Code, cancel the same and issue summons instead if sufficient reasons are shown to him.

IMPERATOR v. MUSSAMAL JANAT AND ANOTHER, 1 Sind. L. R. 69.

——— **Secs. 113, 137.**—*Bona fide claim—Dispute to be settled by Civil Courts—Magistrate—Jurisdiction.*—When, in the course of proceedings under sec. 133 & 137 of the Criminal Procedure Code, a claim of ownership is set up by the petitioner, the Magistrate has to see whether it is a bona fide claim on the part of the maker, or is a mere pretence to oust his jurisdiction. In the latter case, the jurisdiction will not be ousted; but in the former case the Magistrate's proper course is to stay his hand and to allow the dispute to be settled in the Civil Courts. The question is not whether the claim is established to the Magistrate's satisfaction, but whether it is advanced in good faith and is supported by *prima facie* respectable evi-

dence. *Luckhu Narain v. Ramkumar* (1888) 1 L. R. 15 Cal 564 followed.
Batchelor & Heaton J. J.

IN RE MUSA BAGAS 10 Bom. L. R. 563.

——— **Ss. 195 (6), 439.**—*Power of High Court in revision—jurisdiction—revision of Civil Courts' sanction to prosecute.*—The District Court sanctioned the prosecution of the applicant for giving false evidence. He thereupon applied to the Chief Court on the Criminal side to revise the order of the District Court in exercise of the powers conferred by section 439 of the Criminal Procedure Code.

Held—that this section did not confer jurisdiction to interfere with the order of a Civil Court. *Irwin, J.*

RAMYAN ALLI V. OPPOBNO CHARAN CHOWDRY (4 L. B. R., 188.)=

VII. C. L. J. R. 416.

——— **Ss. 196, 537**—*Penal Code, S. 505 (b)—Complaint—Want of order authorising filing of complaint—Irregularity—Revision—Criminal cases—Facts.* The accused were arrested on the 9th May and tried on the 10th and 11th May and convicted of an offence under S. 505 (b) of the Indian Penal Code. On revision it was urged that in the absence of a complaint under section 196 of the Criminal Procedure Code, the Magistrate had no jurisdiction to try the accused and section 537 of the Criminal Procedure Code is not applicable to such cases. There was a letter on the record from the Commissioner of the Division authorizing the prosecution of the accused with reference to S. 196 of the Criminal Procedure Code as sanctioned by his Honour the Lieutenant Governor under S. 505 of the Indian Penal Code.

Held, that even if the letter did not amount in itself to a complaint but merely authorising one, the defect of procedure was cured by S. 537(a) of the Criminal Procedure Code. *Robertson & Kensington J. J.*

SWAMI DAYAL V. K. EMP. 9 P. L. R. 448.

——— **S. 199**—*Complaint instituted by husband under section 498 Indian Penal Code—Subsequent death of husband—Effect of—*Where a complaint under section 498, Indian Penal Code, has been properly instituted, the Courts is vested with jurisdiction to try the same, and the subsequent death of the husband cannot have the effect of destroying that jurisdiction. There can be no abatement of a criminal prosecution.

IMPERATOR V. NUR MAHOMED *wd.* KADAN. 1 Sind L. R. 72.

——— **S. 222, 233, 234, 235**—*three distinct offences of criminal*

misappropriation and two distinct ones of forgery cannot be tried together. The accused was charged with having committed three separate acts of misappropriation within one year. He was also charged with having committed two separate offences of forgery. all these five offences were tried together at one and the same trial. *Held*, that the joint trial could not be supported, as the series of acts charged did not form the same transaction.

Knox & Aikman J. J.

MATA PRASAD v. KING EMPEROR (5 A. L. J. page 400.)

———§ 289—*Misjoinder of parties—Same transaction, meaning of—Prejudice to the accused*—Where accused 1 to 3 were charged under Section 302 Indian Penal Code for murder and accused was further charged in the alternative under S. 201 Indian penal Code for helping accused 1 and 2 in disposing of the corpses with the intention of screening the offenders. *Held*, that the trial was not illegal for misjoinder of charges and persons.

Per Crouch, A. J. C.—(1) By Sections 452 to 458 of Act X of 1872, which are reproduced with slight modifications in the present Act V of 1898, the legislature has considerably widened the powers of the trying court as regards joinder of charges and joinder of defendants, the object being to avoid the same witnesses being troubled to give the same evidence over again.

The expression "same transaction" used in Sections 235 and 239 has not been defined in the Code, but the illustrations to the Sections make the intention of the legislature sufficiently clear. If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose, or by the relation of cause and effect, then the accused may be charged with, and tried at one trial for every offence committed in such series of acts. If more persons than one are accused of offences, committed in a series of acts so connected, they may be tried together.

(2) All the criminal acts which are by English and Indian Law regarded as subsidiary to an offence are included in the same transaction as the offence. Instances of such acts are in the case of theft, the disposing of stolen property and handing it over to a receiver; and in case of murder, the concealment of the body.

(3) However, even where several acts can be included in the same transaction, no joinder of charges or trials should be permitted which will result in bewildering any of the accused.

CROWN v. GHULAM wd SARANG. 1 *Sind L. R.* 73,

—**Sec. 247.**—*Summons case—absence of complainant. Order of “struck off” by Magistrate—second complaint order of acquittal and discharge Practice and procedure.*—A summons case was owing to the absence of the complainant ordered to be struck off by the Magistrate under S. 247 of the Criminal Procedure Code. A fresh complaint was filed, but the Magistrate acceded to the argument that he could not entertain it as he had already once passed an order under S. 247 in the case, and acquitted and discharged the accused.

Held, that neither order was correct in form. The Magistrate was not entitled under S. 247 to record the order “struck off” nor was he in a case which he had not tried, entitled to record the order of acquittal on the second complaint. The most he could do would be to record an order of discharge.

Scott C. J. & Chaubal J.

IN RE S. E. DUBASH 10 Bom. L. R. 628.

—**S. 292**—*evidence adduced through prosecution witnesses—Right of reply—Held*, that where the defence leads evidence in formal exercise of its rights under section 289, Criminal Procedure Code, section 292, Criminal Procedure Code has a direct application and confers an unquestionable right of reply on the prosecution. But, where the defence only elicits facts from, or puts in evidence documents through, the prosecution witnesses in support of its case, it is for the Court to decide whether the evidence so adduced is such as to take the prosecution by surprise and to assign the right of reply accordingly. In assigning the right of reply in such instances, the Court will exercise its discretion cautiously and sparingly and in determining whether the prosecution was taken by surprise or not, the Court will presume that the prosecution had notice of all relevant facts within the knowledge of its own witnesses.

CROWN v. BHURO *wd* GULBEG 1 Sind, L. R. 91.

—**S. 307**—*Sessions Judge—Jury—Difference between judge and jury—High Court not confined to points of difference, but can consider the whole case—Penal Code S. 395—Dacoity—Essentials of the offence.* In hearing a case, which is referred to the High Court under S. 307 of the Criminal Procedure Code, the Court is not to be confined to points of difference between the judge and the jury but the whole case is thrown open to the Court, and it must be decided after giving due weight to the opinions of the Judge and the jury.

The essentials of the offence of dacoity are that the theft should be perpetrated by means either of actual violence or of threatened violence. The threatened violence may be implied in the conduct and character of the mob. It is not necessary that the force of menace should be displayed by any overt act. It cannot assist the accused or reduce the gravity of their offence that no actual hurt was caused for the reason that no one dared to resist the overwhelming show of force which was sufficient to

terrify and did in fact terrify those whose business it was to protect the property.

Batchelor & Knight J. J.

EMPEROR V. CHANDRA KRISHNA, 10 Bom. L. R. 632.

—————**S. 388 (1)**—*Fine—Release on security—Suspension of sentence of imprisonment in default of payment of fine—Distress warrant.* A sentence of imprisonment in default of payment of a fine cannot be suspended unless a distress warrant for the levy of fine is issued at the same time.

Irwin J.

EMPEROR V. THE MY, 4 L. B. R. 151 = 7 Cr. L. J. 452.

—————**Sec. 423**—*Charge to Jury Misdirection in the charge. Heads of charge.*—The High Court is not authorised by S. 423 of the Criminal Procedure Code to alter or reverse the verdict of the jury unless it is of opinion that that verdict is erroneous owing to a misdirection by the judge. If it comes to that opinion then it has the power to reverse the verdict, but that power ought not to be lightly exercised. It is manifestly the intention of the legislature that the power of interference conferred on the High Court should be exercised on occasions.

The expression "heads of charge" in S. 307 of the Criminal Procedure Code must be construed reasonably, and must be held to include such statement on the part of the Sessions Judge as will enable the appellate court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection in the charge.

Batchelor & Heaton J. J.

IN RE SHAMBHULAL JIVANDAS 10 Bom. L. R. P. 565.

—————**S. 436**—*Discharge—Commitment by District Magistrate—Case not "triable exclusively by the Court of Session"—Jurisdiction.* Held that a case does not come within the purview of section 436 of the Code of Criminal Procedure merely because in the opinion of the District Magistrate the offence alleged to have been committed could not be adequately punished by a Magistrate.

Aikman J.

EMPEROR V. DEBI PRASAD, A. W. N. 1908. 189.

—————**Ss. 476**—*nearest Magistrate of the First Class—Directory—Trial by another Magistrate a mere irregularity.*—Held,—that the provisions of section 476, Criminal Procedure Code, requiring the offender to be sent to the nearest Magistrate of the First Class are merely directory and not mandatory, and a trial of the offender by a Magistrate of the First Class having local jurisdiction, who is not the nearest Magistrate, is a mere irregularity curable under section 537 (b) Criminal Procedure Code.

IMPERATOR V. NEWAND *wd* SADHU, 1 Sind L. R. 81

—————**S. 498**—*Bail in non bailable offences—Discretion—Exercised by the judge.* Section 498 of the Code of Criminal Procedure, gives the

Court of Sessions and High Court very wide powers to admit an accused to bail even when he is charged with a non-bailable offence. The admission to bail is a matter within the discretion of the Sessions Judge. In this case the Judge having exercised his discretion with proper care, the High Court refused to interfere. *Aikman J.*

K. EMP. V. BADRI PRASAD, 5 A. L. J. 419.

———S. 526—*Apprehension that fair and impartial trial can not be had—Local inquiry accompanied by a partisan of the complainant—Transfer.* Where during the pendency of a case against the accused for the alleged cutting of a bund, the Magistrate went to the scene of occurrence accompanied by a partisan of complainant and held a local inquiry into a matter which though not the subject of complaint against the accused could nevertheless be imagined by the accused to be such.

Held, that though there were no reasons to suppose, on the materials before the Court, that the Magistrate would not bring to the trial of the case against the accused a fair and impartial mind, still under the circumstances of the case it was desirable that the trial should be held by some other Magistrate. *Geidt & Woodroffe J. J.*

KARBAN ULLAH AND OTHERS V. AZMAT MAHI, 12 C. W. N. 748.

———S. 562—*Reference to superior Magistrate—Power of Magistrate under S. 380, Criminal Procedure Code—Disposal of case.* A second Class Magistrate found the accused guilty of an offence under S. 325 Indian Penal Code, and submitted the proceedings to the District Magistrate under the proviso to S. 562, Code of Criminal Procedure. The District Magistrate returned the case to the second class Magistrate, pointing out that S. 562 could not be applied.

Held, that the District Magistrate's action was illegal in view of the terms of S. 380, Code of Criminal Procedure. *Irwin J.*

EMPFOR V. ABDUL LAL SHEIN, 4 L. B. R. 150 = 7 Cr. L. J. 449.

Evidence Act (1 of 1872) S. 27—Confession—Accused pointing out stolen property concealed in a pond. The accused pointed out the place in the pond where the bundle of stolen ornaments was recovered. The prosecution alleged that the accused had said to the police that he had buried the things in the pond.

Held, that the statement of the accused was inadmissible in evidence. *Chevis J.*

KAKA SINGH V. KING EMPEROR, 9 P. L. R. 490.

Excise Act (XII of 1890) Ss. 44 (2), 48, 57—Sub-Inspector—Excise Officer. When the police arrested a men with 18 tolas of charas and through their official superior brought the accused before Magistrate, held, that there was sufficient compliance with the provisions of Sections 44 and 57 of the Excise Act, and the accused could be tried by such a Magistrate. *Knox & Aikman J. J.*

K. EMP. V. LACHMI NARAIN, 5 A. L. J. 444.

Opium Act (I of 1878) Ss. 5 and 9.—*Rules framed under the Act—License in form prescribed by the Commissioner—Breach of.* S. 5 clause (f) of the Indian Opium Act I of 1878 authorizes the Local Government to frame rules for regulating the sale of opium, and S. 9 makes it an offence to sell opium in contravention of the Act or the rules so framed. The Local Government cannot, however, delegate this power of making the rules to the Commissioner in Sind, and therefore the last words of rules 39 "or in such form as the Commissioner from time to time prescribes" are *ultra vires*.

A breach of the terms of a license which is not in the form E as prescribed by the Act but in the form approved of by the Commissioner in Sind cannot be punished under the Act.

CROWN V. VELJI LAKHAMS, 1 Sind L. R. 70.

Penal Code S. 408.—*What is.* Where the alleged facts were that the accused hypothecated to the complainant by a written contract, all his claims as a contractor against Government in respect of work done and materials supplied to the Executive Engineer, and undertook regularly and without fail to convey and make over to applicant all cheques drawn by the Executive Engineer in his favour and subsequently, in violation of the said contract, cashed two such cheques and appropriated the proceeds.

Held, that these facts constituted Criminal Breach of Trust. *Shaw J.*

SHUDUTHROY V. AGAMA. 1908, N. B. Cr. Rg. = 8 Cr. L. J. 24.

———**Ss. 417 and 511.**—*Attempt to cheat—Complainant in a prosecution for attempt to cheat.* The accused without any authority arranged a contract for the delivery of goods to the complainant's firm by Messrs. Birkmyre Brothers. On the repudiation of the contract by the latter, the former pressed their claim under the contract and instructed their pleader to write to the latter firm and demand fulfilment of the contract. The accused then went to the pleader, falsely represented himself to be a member of the complainant's firm and instructed the pleader to write a letter in the name of the complainant's firm to Messrs. Birkmyre Brothers stating that the contract had been cancelled by the complainant's firm. The pleader wrote the letter but on reference to the complainant's firm refrained from despatching it. On the prosecution of the accused by the complainant under Ss. 417/511, I. P. C.

Held, that the accused committed the offence under Sections 417–511, I. P. C., as he fraudulently induced the pleader to write the letter which he would not have otherwise done, and as if the fraud had been successful it must necessarily have caused injury to the pleader in mind, reputation and perhaps in his business and might have involved him in litigation.

That in a prosecution on a charge of attempting to cheat a certain person, that person need not be the complainant.

Rampini & Sharfuddin J. J.

MAHADEO LAL PETITIONER V. DHONRAJ MAISRI, 12 C. W. N. 750.

DIGEST OF INDIAN (CRIMINAL) CASES.

Criminal Procedure Code, s. 106 (3)—*Order to furnish security—Appeal—Court.* An order for security under sec. 106 (3), Cr. P. Code may be made in appeal whether the original court had jurisdiction to pass such an order or not. The word "also" in the section plainly implies that the order may be independently made by an appellate Court or by a Court in revision, as well as by the original Courts specified in the first clause; and it is not implied that the powers of the original Court in any way control or limit those of the appellate or revisional authority. 21 Cal., 622, 29 Mad., 190, and 30 Mad., 48 dissented from. 30 Mad., 182 approved. *Scott O. J. & Knight J.*

EMP. v. BHAUSING, 10 Bom. L. R. 759.

Criminal Procedure Code, S. 107, 117—*Order passed on consent of a party to be bound down without evidence taken.* The proceeding under section 107 of the Criminal Procedure Code is a precautionary measure and not a trial for an offence, and in such a proceeding no one should be bound down, unless it shown that he is about to commit a breach of the peace. Where, therefore, a person, called upon to show cause why he should not be bound down under the section, appeared before the Magistrate and agreed down, whereupon the Magistrate directed him to execute a bond without taking any evidence at all. *Held*, that the order was illegal. *Rampini & Sharfudin J. J.*

RAM CHANDRA HALDAR v. EMPEROR, 35 Calc. 644.

———**Section 133.**—*Application for jury—Verdict binding.*—One P.. was called upon under section 133 of the Criminal Procedure Code to show cause why an obstruction should not be removed from a public way. His mukhtar appeared and nominated certain persons to be jurors who were accepted by the Magistrate. They passed a verdict against R. viz. that the land obstructed was a public way. *Held* that the objection was such as could be left to the jury to decide. *Knox J.*

RAM BILAS v. KING EMPEROR. (5 A. L. J. 488.)

———**Ss. 133 and 140.**—*Order directing accused to protect his well according to the instructions of the Local Fund Overseer—Validity. Notice under s. 140 Whether condition precedent to punishment for disobedience of order under s. 133.*—A Magistrate made an order directing

the accused to protect his well as being dangerous to the public. The accused disobeyed.

Held that no notice under S. 140 was necessary before the accused might be punished for the disobedience. Whenever the time fixed in the order under S. 133 has been allowed by the person against whom that order is made to pass without compliance with the order or protest against it, the liability to the punishment attaches at once to that person and may be enforced irrespective of S. 140.

Miller J.

IN RE ALUVALA GURAVIAH (3 M. L. T. 403).

———*Sec. 145.—Irregularity amounting to—want of jurisdiction—Interference by the High Court.*—A Magistrate drew up a proceeding under sec. 145 Cr. P. C. but he did not serve any notice upon the first party in accordance with sub sec. (3) of sec. 145, Cr. P. C. nor did he fix a notice on some conspicuous place at or near the subject of dispute, nor receive a written statement from either party before he passed his final order under sec. 145. There was no appearance on behalf of the first party and no opportunity was given to cite witnesses or to put in any documentary evidence. But on examining one witness on behalf of the second party the Magistrate held that there was a likelihood of a breach of the peace and declared the second party to be in possession.

Held, this was bad in law and the order must be set aside.

Rampini & Sharfuddin J. J.

SAJJAD V. PARBATICHARAN 12 C. W. N. 848.

———*Secs. 145, 146 and 148.—Refusal to grant time for regular proceedings to be followed—attachment under sec. 146 when the parties did not file written statements or produce evidence—Illegality.*—In a proceeding under sec. 145 Cr. P. C. the parties appeared on the day of hearing but did not file any written statements, or produce any evidence. They prayed for time which the Magistrate did not grant. He then heard the parties and being unable to satisfy himself as to which of them was in possession, attached the subject of dispute under sec. 146.

Held that the Magistrate in so doing refused to exercise jurisdiction. He ought to have granted time to allow regular proceedings to be followed, or he might have informed himself of the facts of the case either by local enquiry under sec. 148, Cr. P. C. or in other ways; as he did neither, his order under sec. 146 is bad in law and ought to be set aside.

Stephen & Holmwood J.

SHEIKH MANSERALI V. MATIALLAH 112 C. W. N. 896.

—————**Sec. 195**—*Sanction to prosecute given by an appellate Court—Power of revoking it.* Held that whether a Court grants sanction to prosecute on the original or appellate side it can be revoked under section 195 (7) (a) of Act V of 1898 by the Court to which appeals ordinarily lie from the order of the Court granting the sanction, so the Sessions Judge has jurisdiction to entertain an application to revoke a sanction granted by the District Magistrate in his appellate capacity.
Clerk C. J. & Battigan J.

RAM KISHAN V. MEARAM, 3 P. W. R. 64.

—————**S. 195**—*Sanction to Prosecute—By whom application for sanction may be made.* There is nothing in law to prevent the Government Pleader on instructions from the District Magistrate applying for sanction to prosecute in respect of an offence alleged to have been committed in connection with a Civil suit. *In the matter of Chandra Kanta Ghose* (3 C. W. N. 3) distinguished.
Aikman J.

EMPEROR V. RAM ADHAR RAI, A. W. N., 1901, 209.

—————**Sec. 195 439**—*Sanction to prosecute—Revision—Powers of High Court.* An application under section 195 of the Code of Criminal Procedure for sanction to prosecute was made to and granted by a Magistrate of the first class. A further application under section 195 of the Code to revoke the sanction was made to the Sessions Judge, but was rejected. Held that the High Court had power to send for the record of the case under section 435 and to interfere, if necessary, under section 439 of the Code of Criminal Procedure with these orders. *Kusal v. Badri*, Weekly Notes, 1907, p. 283, overruled.

Aikman & K. Hussain J.

EMPEROR V. SERH MAL, 30 All., 243.

—————**S. 205.**—*Pardah woman.—Her personal appearance when to be dispensed with—Issue of summons in warrant case—Magistrate's power to cancel warrant and substitute summons—Personal appearance when to be enforced.* Held that unless and until a Magistrate has good reason to believe that there is a strong likelihood of the charge being proved, an accused, if she be really a Pardah woman of good portion should not ordinarily be compelled to appear in person in the first instance.

Held also that although a case may be one in which a warrant may be issued in the 1st instance it is not necessary for the Magistrate to do so and that under section 75 (2) of the Code of the Criminal Pro-

cedure Code 1898, he is at full liberty to cancel at any time a warrant and substitute a summons.

Held further that if a Magistrate sees fit to issue a summons he can act under section 205 Criminal Procedure Code 1898, and dispense with the personal appearance of the accused until he considers that the case has reached a stage at which the presence of the accused is necessary when he can compel it by proper process. Robertson J.

MUSSAMUT PREM KAUR v. MAI SHAM NATH (3 P. W. R. 51.)

———**Sec. 437.**—*Notice to the accused—Forgery—sanction of the Civil Court to prosecute Proceedings under the Registration Act arising out of the same transaction, if good without sanction*—The accused was placed on his trial for offences under secs. 422, 467, I. P. C. and sec. 82 Indian Registration Act on the allegation that he had abetted the fabrication of a forged bond, but was discharged. The District Magistrate under sec. 437 directed a further inquiry into the case; but before the proceeding under s. 437 commenced a Civil Court had decided that the bond has a forged one.

Held.—That the case against the accused cannot proceed as regards the charge of forgery or abetment of forgery without the sanction of the Civil Court.

That with regard to the charges under sec. 423 I. P. O. and sec. 82 of the Indian Registration Act, which did not require any sanction, the accused should not be prosecuted till the Civil Court sanctioned his prosecution for forgery as it was not desirable that the case should proceed against him piecemeal. That an order for further inquiry under sec. 437 Cr. P. C. without giving a previous notice to the accused to show cause against the application for further inquiry must be set aside. *Haridas v. Shritulla* 15 Cal. 608. *Wahed Ali v. Emperor* 32 Cal. 1050 followed.

Rampini & Sarfudin J. J.

GIRDHARI v. THE EMPEROR 12 C. W. N. 822.

———**Secs. 439—417.**—*Acquittal—Revision on facts as well as Law—High Court power to expunge damaging remarks against witnesses Approvers prosecution for forgery when allowed.*—*Held* that provisions of secs. 439 (1) and (4) clearly empower the High Courts to revise an acquittal and set it aside both on facts and Law, though in doing so it cannot then and there convict but can only order a new trial; and that it is not barred from exercising this power simply on the ground that the Government has a right of appeal; the meaning of sub-section (5) is

only that the Government not having appealed cannot ask the High Court to revise an acquittal,

But such a power should be exercised only in exceptional cases so as not to encourage revision of acquittals.

Kensington & Johnstone J. J.

VIRU MAL v. SADU 3 P. W. R. 53.

———S. 476—*Order under section must be made during or immediately after the conclusion of the proceedings.* On a reference to the Full Bench whether a Magistrate has jurisdiction to take action *suo motu* under section 476 of the Code of Criminal Procedure more than two months after the termination of the proceedings before such Magistrate. *Held*, (Miller, J., dissenting), that it was the intention of the Legislature in enacting section 476 that an order under the section should be made either at the close of the proceedings so shortly there after that it may reasonably be said that the order is part of the proceeding. *Begu Singh v. Emperor*, 34 Cal., 551, followed. *In re Subbaraya Vathiar*, (15 M. L. J., 489) followed. The earlier enactments and corresponding English Acts on the subject considered and discussed. (F. B.)

RAHIMADULLA SAHIB v. EMPEROR. 31 Mad., 140.

———S. 488—*Magistrate has a discretionary power in granting maintenance—Refusal to grant when guilty of adultery with one of lower caste not a wrong exercise of such discretion*) Under section 488 of the Code of Criminal Procedure, the Magistrate has a discretionary power to award maintenance, and such discretion is not wrongly exercised when a Magistrate refuses maintenance to woman who for adultery with one of a lower caste, is expelled from caste and has thus made it impossible for her husband to live with her. *Benson & Miller J. J.*

PONNAYEE v. PERIYA MOOPPAN, 31 Mad., 185.

———S. 498—*Bail—Discretion of Sessions Judge in admitting to bail a person charged with a nonbailable offence.* In this case the High Court declined to interfere under the circumstances stated in its order with the discretion of the Court of Session in admitting to bail a person who stood committed to that Court on a charge under section 302 read with section 109 of the Indian Penal Code. *Aikman J.*

EMPEROR v. BADRI PRASAD, A. W. N., 1908, 195.

———Sec. 562—*Penal Code, section 420. Held that section 562, Criminal Procedure Code is not applicable to convictions under section 420 Indian Penal Code. The word "cheating" used*

in section 562 Criminal Procedure Code covers only simple cheating, and not the more aggravated forms of cheating for which the higher punishments are provided in the Indian Penal Code. *Chevis J.*

THE CROWN v. NEKI RAM, 3 P. W. R. 62.

Jurisdiction—*Reference to subordinate Magistrate—Local enquiry—Right of superior Magistrate.* Where a Deputy Magistrate referred a case to his subordinate without pointing out how any local enquiry is necessary and merely because there was a criminal trespass case.

Held, that the first class Magistrate had no right to refer the case to his subordinate. *Miller J.*

In re **RAMARWAMI NEYAKER**, 3 M. L. T. 402.

Jury.—*Trial by—Misdirection—Culpable homicide—Proper charge in case of culpable homicide—Direction as to truth of plea of accused—Misrepresentation as to the effect of medical evidence—Expression of opinion by Judge.*—The omission by the Judge to lay specifically before the Jury, in a case of culpable homicide, the question whether in causing death the accused had the intention to cause death or such injury as was likely to cause death, or the knowledge that he was likely to do so, though in the earlier part of the charge he had explained generally the terms "murder" and "culpable" and culpable homicide" and had pointed out distinction, is a material misdirection. The omission to direct the Jury to consider the truth of the plea of some of the accused that they were not present at the occurrence, before convicting them, is a misdirection. Misrepresentation of the medical evidence is a misdirection. It is a misdirection for the Judge to express his opinion on various questions of fact without telling the Jury that his opinion is not binding on them and that they are the sole judges of fact. *Geidt & Wodroffe J. J.*

MATABAR GHOSE v. EMPEROR, 35 Calc. 531.

Penal Code Sections 21, 186—*Public servant.* A clerk in the collection department of a District Municipality under the Bombay District Municipal Act of 1901 is a public servant within the meaning of S. 21 of the Penal Code; offering any obstruction to him is an offence under S. 186 of the Code. *Scott C. J. & Heaton J.*

EMPEROR v. BABULAL, 10 Bom. L. R. 761.

Penal Code Sec. 85—*Previously convicted.* 'Previously convicted' means convicted before the commission of the second offence. *Shaw J. C.*

KING EMPEROR v. LA SING, 14 Bur. L. R. 186.

—————**S. 147**—*Several alternative Common objects charged—Judgment of appellate Court—Omission to find whether the charge was sustainable and which common object has been proved.* Where a charge, as drawn up by the Magistrate, alleges several alternative common objects of the unlawful assembly, it is incumbent on the appellate Court to determine, whether it is sustainable, and if so, which of the common objects stated has been made out. *Woodroffe & Coxe J. J.*

MANARUDDI v. EMPEROR, 35 Calc. 718.

—————**Sec. 147**—*Common object—No express finding as to common object does not vitiate conviction when accused not prejudiced.* In a trial of the accused for an offence under sec. 147, I. P. C., the common object stated in the charge was to "enforce a right or opposed right" but as there was no contest in either of the lower Courts as to the common object; those Courts did not discuss the question of the common object and come to any express finding on the point but it was clear that both the Courts impliedly found that the common object was as stated in the charge. *Held*, the conviction was not bad for the accused were not prejudiced thereby. *Rampini & Sharfuddin J. J.*

DASARATH MOHAPATRA v. RAHU SAHU, 12 C. W. N. 944.

—————**Sec. 193**—*False statement made in a deposition which was not read over the witness in presence of the accused or his pleader Criminal Procedure Code—Sec. 360, non compliance with, effect of—Indian Evidence Act, secs. 91 and 80—Proof of statement.* A witness cannot be convicted under sec. 193, I. P. C., for having made false statements in his deposition before a Criminal Court when the deposition was not read over to him in the presence of the accused or his pleader in accordance with the provisions of sec. 360, Cr. P. C. *Kamatchivathan v. Emperor*, 28 Mad., 308 (1904), followed.

Where the deposition of a witness in a criminal trial is not read over to him in the presence of the accused or his pleader in accordance with the provisions of sec. 360, Cr. P. C., it is not admissible in evidence and no other evidence is admissible in proof of the statements made therein. *Geidt & Woodroffe J. J.*

MAKENDRA v. THE EMPEROR, 12 C. W. N. 845.

—————**sec. 414**—*Pointing out stolen property—Inadmissibility of admission of having concealed it.* *Held*, that an accused persons, merely pointing out the place where some of the stolen property is recovered and his making admission before the police of having concealed it there which admission is not admissible in evidence, are not sufficient

The Lawyer.

for convicting him under sec. 414 I. P. C., in the absence of any other independent proof convicting him with the commission of the crime.

Chevis J.

KAKA SINGH v. THE KING EMPEROR, 3 P. W. R., 52.

Revision—Practice—Punjab Chief Court. In dealing with an application for revision on facts the correct principle is to refuse interference when there is no evidence on the record which is adequate and which, if believed justifies the conviction. When two Courts have agreed on the facts the mere fact that a single or division Bench of the Chief Court might have come or would have come to a different decision on the facts, would not except in the rarest cases justify interference by the Court.

Robertson & Kensington J. J.

SWAMI DAYAL v. THE BROWN, 9 Punj. L. R. 448.

Revision—Criminal cases, Acquittal on facts, Discretion—Expunging findings from judgment—Sanction to prosecute—Approver—Pardon—Withdrawal of. Held, that the revisional powers of the Chief Court against orders of acquittal are not confined to points of law but extend in exceptional cases to questions of fact also; though the Court in doing so cannot then and there convict but can only order a new trial.

Kensington & Johnstone J. J.

VIRU MAL v. SADHU, 1 P. L. R., 507.

Sentence—Date of commencement of sentence of imprisonment antedating sentence—Nominal sentence—Detention under trial—Custody. An accused person after having been in custody for a week, and was sentenced "to undergo the imprisonment he had already suffered."

Held, that the sentence was illegal.

Irwin J.

EMPEROR v. THA HMAN, 4 L. B. R., 652 = 7 Cr. L. J. p. 453.

Workmen Artificers Act (XIII of 1859), secs. 2 and 5—Extension of the act under sec. 5—Effect—Money advanced, whether recoverable when contract expired. When Act XIII of 1859 is extended to a certain place under the provisions of sec. 5 of the Act a master or employer residing or carrying on business in the place has the same rights as are conferred by the act on masters or employers resident or carrying on business in any Presidency town.

Per Stephen J.—Under sec. 2 of Act XIII of 1859, a master or employer can sue for the repayment of the money advanced by a proceeding under the Act even after the term of the contract has expired.

Queen Empress v. Konda, 16 Mad., 717 (1893) followed. *Khoda v. Motilal*, 11 C. W. N. 247 (1906) dissented from.

Per Holmwood J. (contra)—When the term of the contract has expired, a master or employer cannot enforce the repayment of the money advanced by a proceeding under Act XIII of 1859. *Khoda v. Motilal* 11 C. W. N. 247 (1906) affirmed. *Stephen & Holmwood J. J.*

NARSING PRASAD v. THE KING EMPEROR, 12 C. W. N. 869.

DIGEST OF INDIAN (CRIMINAL) CASES.

Arms Act Ss. 19 (e) (f), 20.—*Sanction to prosecute—illegal possession of fire-arms—previous sanction institution of proceedings—charge Criminal Procedure Code Ss. 190, 195, 535, 537 (b).*—The accused was sent up by the police for trial under section 19 (e) of the Arms Act for illegally going armed. After hearing the prosecution the Magistrate charged him in the alternative with this offence and with illegal possession of an arm under section 19. (f) The sanction of the District Magistrate, required under section 29, was not obtained till after the framing of the charge. The accused was finally convicted under section 19 (f).

Held, that as the police sent up the case under clause (a) of section 19 proceedings under clause (f) were not instituted until the Magistrate framed the charge under that clause although the charge was actually framed with jurisdiction, the Magistrate might have instituted proceedings afresh, after receiving sanction, by framing a fresh charge and as the accused had not been in any way prejudiced by the procedure adopted, the absence of a fresh charge after the receipt of sanction was cured by section 535 of the Code of Criminal Procedure; section 537 (b) of the Code of Criminal Procedure does not cure the want of sanction in any case except when the sanction is required under section 195 of the Code.

Irwin C. J.

KAKA v. EMPEROR 4 L. B. R. 247 = 8 Crim. L. J. R. 65

Criminal. P. Code—Secs. 108 and 118.—*Order binding down a party without separate finding in regard to each member of the party—Illegality.*—Where in a proceeding under sec. 107 Cr. P. C. against a party consisting of 17 persons, the Magistrate bound down all of them without coming to a separate finding as regards each of them individually.

Held.—The order is bad in law and ought to be set aside.

Stephen & Holmwood J. J.

AJODHYA PRASAD SINGH v. THE EMPEROR 12 C. W. N. 992.

—————**S. 117 (4)**—*Parties in conflict with one another cannot be dealt with in one enquiry—Such joinder illegal.*] Two or more persons are not “associated together in the matter under enquiry” within the meaning of section 117 (4) of Criminal Procedure Code when there is a conflict between them, and they cannot therefore be dealt with

in the same enquiry under the provisions of that section. Such joinder is not a mere irregularity but an illegality which will vitiate the proceedings.

Walis J.

GANAPATHI BHATTA v. EMPEROR, 31 Mad. 276.

———S. 118—*Order absolute at variance with the conditional order, legality of—Inquiry about sureties—Police report, procedure on.* Magistrate cannot vary the conditional order made under s. 112 of the Criminal Procedure Code by enforcing further conditions in the order absolute.

A Magistrate ought not to reject sureties merely on the report of the Police without making any inquiry himself. *Evans J. C.*

RAMANAND SINGH v. KING-EMPEROR, [11 O. C. 267]

———S. 133, 136, 140—*Where order under s. 133 not complied with, prosecution sustainable under s. 136 without notice under s. 140—Order under s. 133 cannot direct works to be done which are not necessary for the safety of the public.* Where an order issued by a Magistrate under section 133 of the Criminal Procedure Code is not complied with or protested against within the time fixed by the order, a prosecution of the person disobeying under section 136, is sustainable without notice under section 140. Where a well adjoining a road is dangerous to the public as well as to the existence of the road, an order under section 133 can direct the construction of such works only as are necessary for the safety of the public and not of works necessary for the safety of the road. *Queen-Empress v. Bishumbar Lal*, (13 All., 577), approved. *Meller J.*

ALUVALA GURUVIAH v. EMPEROR, 31 Mad., 280

———Sec. 145.—*Applicability, to disputes as to possession between manager and member of a joint Hindu family.*—The possession of the manager of a joint Hindu family as against another member can be protected by proceedings under sec. 145 Cr. P. C. *Benson & Boldam J. J.*

BHASKARUNI CHALAPATIRAYADU 18 M. L. J. 343.

———S. 195.—*Object of.*—Among the objects of section 195 of the Criminal Procedure Code, two are undoubtedly the protection of persons from being prosecuted on insufficient grounds and from malice or ill-will, and the prevention of prosecutions where the public interest cannot be served.

The object of giving the power to sanction is to secure as far as possible that no man shall be prosecuted, unless the court hearing the case or a superior court is satisfied that it is a proper case to put a party on his trial.

A judicial officer to whom an application for sanction is made, should put himself in the place of applicant and consider, "If I were prosecuting this case myself, am I in a position to produce such evidence as, if un rebutted would support a conviction.

Sanction, therefore should not be given for a prosecution for giving false evidence, unless there are good and reasonable grounds for considering that the prosecution will be successful.

A Magistrate in deciding whether to a sanction under section 195 of the grant Criminal P. Code a prosecution for giving false evidence has power to hold an enquiry and record other evidence besides that in the case before him in the course of which the offence is supposed to have been committed.

Hartnell J.

SUCK SEW V. HAIN KEE 14 Burma L. R. 207.

———**S. 197, 527**—*Power of Local Government to specify Court of trial of public servant Local jurisdiction magistrate.* The Local Government acting under, section 197 of the Code of Criminal Procedure, sanctioned the prosecution of A. a public servant for an offence committed in Upper Burma, and specified the Court of a magistrate in Lower Burama as that before which the trial was to be held.

Held, that the magistrate so specified had power to take cognizance of offence although it was alleged to have been committed within the local jurisdiction of the Judicial Commissioner of Upper Burma, while the magistrate's own jurisdiction was within the limits of the jurisdiction of the Chief Court of Lower Burma .

Moore J.

EMPEROR V. MAUNG RA. = 4 L. B. R. 265.

———**Sec. 248 and 347.**—*Commitment to the Court of Sessions under sec. 347 not controlled by sec. 203—High Court's criminal appellate jurisdiction—Power to quash commitment to the High Court Sessions.* Sec. 347 Cr. P. C., is not to be read as subject to the provisions of sec. 208 Cr. P. C., and it is not imperative on the Magistrate after the prosecution has closed its case and the Magistrate has decided to commit the accused for trial to the Court of Sessions in exercise of his powers under sec. 347 Cr. P. C., to allow the accused to cross-examine the witnesses for the prosecution or to call witness in his defence.

Brett & Ryves J.

PHANANDRA NATH MITRA V. THE KING EMPEROR, 12 C. W. N., 1014.

———**Secs. 223, 233, 234, 235, 236 and 237—Joinder of charges—Penal Code, secs. 124 A and 153, A.—Publication in session.** The accused was convicted of offences under ss. 124 A and 153 A of the

Indian Penal Code in respect of each of the two articles that appeared in his newspaper. The Magistrate who tried the case had framed a charge, with two heads, one being on each article and each had mentioned that the accused was punishable under sec 124 A and 153A for publishing the article. It was contended on behalf of the accused (1) that the receipt of his paper by Government servants in their capacity as such servants was no publication (2) that each of the offences ought to have been charged separately (3) that from the articles passages which offended against sec. 124A and those against 153A ought to have been distinctly pointed out in separate charges, and (4) that the trial of four offences at one trial was illegal.

Held (1) that it is a sufficient publication if a newspaper containing a seditious article has been received by a Government servant.

(2) That the accused had distinct notice of the charges he had to answer and the informal mode, if any, in which the charges were drawn up, was cured by sec. 224 of the Criminal Procedure Code.

(3) That as each of the two articles taken as a whole brought the act of the accused within each of the ss. 124A, and 153A no specification of particular passages was necessary.

(4) That as the charge under sec. 124A in respect of one article could have been legally joined with a charge under sec. 124A in respect of the other article and as the accused could have been convicted under sec. 153A by the application of ss. 236 and 237 of the Criminal Procedure Code even though s. 153A was not the subject matter of the charge a addition of s. 153A in the charge was not illegal. *handavarkar & Heaton J. J.*

EMPEROR v. TRIBHOVANDAT P. Mangrol vala, 10 Bom. L. R. 81.

———**Section 259.**—*Accused discharged—jurisdiction to entertain fresh complaint.*—A Magistrate who has discharged an accused person under sec. 254, Criminal Procedure Code can reenteratrain a fresh complaint on the same facts. *Munra, & Sankaran Nair J. J.*

IN RE RUDRA GOUD 4 Mad. L. T. 140.

———**Sec. 271 (2), 342.**—*Accused pleading guilty—Procedure postponing conviction to allow confession to be considered against co-accused—General examination of the accused.*—When an accused person pleads guilty the court should record the confession and forthwith convict him thereon. If there are other persons being tried with him for the same offence, the court should not postpone his conviction merely for the purpose of allowing the statements he may have made to be considered against the co-accused. It is against the spirit of law to postpone the conviction so that the per-

son who has pleaded guilty may technically be said to be tried jointly for the same offence.

Richards, & Karamat Husain J. J.

KHEORAJ v. KING EMPEROR. 5 A. L. J. 505.

————S. 337 (2), 339—*Accused to whom pardon is tendered ought ought to be examined as a witness and not be put into the dock at once.*) An accused person to whom pardon has been tendered and who has accepted such pardon, ought not, when he shows an intention not to give the evidence which he has led the prosecution to expect, to be put back into the dock without being examined as a witness. He should, under such circumstances, be examined as a witness as directed by section 337 (2) of the Criminal Procedure Code, and then dealt with under section 339 of the Code. Such a person should, if tried, be tried separately and after the trial of the other accused over.

Wallis & Munro J. J.

ARUNACHELLAM v. EMPEROR, 31 Mad., 272.

————s. 342—*Scope of.* The general examination of the accused provided for by section 342 can be made only for the purpose of enabling the accused to explain the circumstances appearing against him in evidence. The court should not ask a confessing accused "who were with him in the dacoity."

Richards Karamat Husain J. J.

KHEORAJ v. KING EMPEROR, 5 A. L. J. 505

————S. 407, 428—*District Magistrate may withdraw part heard appeals—Such Magistrate not bound to examine witnesses summoned.* Section 407 of the Criminal Procedure Code places no restriction on the power of the District Magistrate to withdraw appeals from Subordinate Magistrate, and it is competent to him to withdraw partheard appeals. There is nothing in section 428 of the Code which renders it obligatory on the District Magistrate so withdrawing an appeal to examine witnesses summoned by the Subordinate Magistrate from whom the appeal is withdrawn.

Benson & Miller J. J.

ALAGU AMBALAM v. EMPEROR, 31 Mad. 277.

————S. 203 and 437—*Complaint, Grounds for Dismissal of—Order for further inquiry—Notice to the accused, not essential.* Where a complaint had been dismissed under s. 203 of the Code of Criminal Procedure, the Sessions Judge is not bound to issue notice to the accused before ordering further inquiry under S. 437, Criminal Procedure Code. *Girish Chunder Ghose v. Emperor* 29 Cal 457, followed. A person bringing a complaint in a criminal Court is entitled to produce evidence in support of it subject

only to two conditions, viz., (a) that the facts alleged constitute an offence and (b) that there are no circumstances apparent on the examination of the complainant, such as to justify the Court in coming to the conclusion that the complaint is false.

Pigot J. C.

MUHAMMAD SALAMAT UL-LAH v. LALA SITAL PRASAD (11 O. C. 261)

Excise Act.—*Burma illegal search—effect of*—Persons who make a search illegally under the Excise Act of 1899 render themselves liable to be sued for damages; but this illegal action does not affect the question whether the person whose house was illegally searched has committed an offence under the Excise Act.

Hartnoll J.

MI HAUk v. KING EMPEROR 14 Burma L. R. 208.

Penal Code Ss. 78, 79, 344.—*Custody of civil prisoner, commitment of civil prisoner to jail—wrongful confinement—oral order of Judge—mistake of law—mistake of fact.*—**Civil Procedure Code Ss. 478, 481.**—A was arrested under section 478 of the Code of Civil Procedure on his being brought before the court the Judge orally ordered the bailiff to keep him in custody. The bailiff in turn orally ordered a process-server to take charge of him and this was done.

The bailiff and process-server were subsequently prosecuted and convicted under section 344 of the Indian Penal Code, of wrongful confinement.

Held, that section 78 of the Indian Penal Code does not extend to the oral order of a Judge, that as section 481 of the Code of Civil Procedure only authorises a Judge to commit persons to jail, the mistake of the bailiff and the process-server in believing that their oral orders justified their action was purely a mistake of law and not of fact, and that therefore they were rightly convicted.

Irwin C. J.

MAUNG PU, v. EMPEROR. 4 L. B. R. 283=8 Cr. L. J. R. 68.

———**Sec. 175**—*Omission to produce document by an accused on trial*—**Criminal Procedure Code sec. 94.** The provisions of sec. 94 Cr. P. C., cannot be taken to apply to the case of an accused person on his trial to whom a notice has been issued to produce an incriminating document.

Where an accused while on his trial for offence under secs 471 and 193 I. P. C., being directed to produce a certain incriminating document did not produce the document and in consequence prosecuted and convicted under S. 175, I. P. C.

Held—The accused could not be convicted under sec. 175 I. P. C. for his omission to produce the document.

Baett & Ryves J. J.

ISHWARCHANDRA GHOSHAL v. THE EMPEROR, 12 C. W. N. 1014.

———**S. 225-B**—*Offence under section committed when a prisoner escapes while the peon having custody of him is asleep* A man legally arrested for an offence must submit to be tried and dealt with according to law. A person who escapes, after he is arrested and before he is tried by due course of law, owing to the neglect or consent of the person having him in custody, is guilty of an offence under section 225-B of the Penal Code.

Benson & Boddam J. J.

THE PUBLIC PROSECUTOR v. RAMASWAMI KONAN, 31 Mad. 271.

———**Sec 341**—*Wrongful restraint*. Mere direction or demonstration will not construe wrongful restraint.

Boddam J.

IN RE SUBA ROW, 5 Mad. L. T. 141.

———**Sec. 379 and 403**—*Theft—Criminal misappropriation—Finding property in crowded place and retaining it for a short time—No proof of dishonest intention—Previous conviction*. Held that where a person in a crowded gathering picks up from the floor of a temple a purse containing articles of appreciable value, places it in his waist cloth, has not taken action to discover its owner and is arrested a short time after by the Police, he is neither guilty of theft under sec. 379 I. P. C., in the absence of any clear proof to that effect, nor of criminal misappropriation under sec. 403, I. P. C., as these circumstances alone cannot establish that the person intended to appropriate or covert the property to his own use,

Held also that when determining whether a person has committed an offence his previous connections should altogether be out of consideration and he should be supposed of unblemished character.

Clarke C. J. Reid & Chatterji J.

PHUMAN v. THE CROWN, 3 P. W. R. 72.

Practice—Private Vakils—appearance of—Discretion of Court. A Magistrate cannot pass a general order prohibiting a private Vakil from appearing and practising in all cases before him.

Wallis J.

IN RE RANGA ROW. = 4 M. L. T. 91.

Punjab Military Transport Animals Act.—(*Punjab Act 1 of 1903, sections 27, 29 30 and Rules VIII, XI, XII, and XIII thereunder—non production of animal when an offence—Criminal Procedure Code sections 233 to 236, 239, 435 and 439.*—Held—that before owner of animals can be made criminally liable under section 29 (b) of the Punjab Act 1 of 1903 for failing to produce animals at an inspection the Prosecution must show clearly.

(i) not only that the inspection was of a kind at which owners could legally be required to produce their animals but also that owners had notice that the inspection was of this particular kind.

(ii) That the notice was properly drawn up and duly served in strict compliance with the provisions of section 27 of the Act and the rules framed thereunder.

(iii) That animals of a particular age and description were registered and that copies of the entries were given to the owners as required by rule XL.

(iv) That the commissioner's previous sanction to prosecute as required under section 30 of the Act and the rules thereunder had been obtained.

Held also that a joint trial of several persons accused under section 29 (b) of the act is not covered by section 234, 235, 236 and 239 of Act V of 1898, and being contrary to the provisions of section 233 is illegal.

Reid J.

MANGAL SINGH v. THE CROWN 3 Punj. W. R. 66.

Punjab Municipal Act (XI of 1891) sec. 128—*Retaining wall on bank on a Hill Station—Municipal Committee's power directing its removal—Renewal falls within repairs.* Held that where the owner or occupier of a house on a hill station builds a retaining wall or bank which is dangerous, the Municipal Committee can, under section 128 of the Municipal Act of 1891, compel him to build a new wall of specified dimensions and character in its stead as the word "renewal" can come within the purview of the word "repairs" used in the said section.

Chatterji & Robertson J. J.

DEVI SARAN v. THE CROWN, 3 Pun. W. R. 79.

Practice—Criminal trial—Waiver of provisions regulating the trial *Illegality—accused cannot waive.* An accused person cannot in a criminal trial waive the benefit of the legal provisions regulating the trial. A misjoinder of charges vitiates the trial and no waiver of the irregularity by the accused can cure it.

Wallis J.

RANGASAWMI CHETTY v. EMPEROR 18 M. L. J. 330.

Revision—Practice. No definite rules can fetter the action of the High Courts in the use of their revisional powers. Technical flaws and minor errors in the procedure of the Lower Courts and even mistake in the appreciation of portions of evidence are good grounds for interference where they have resulted in substantial prejudice or injustice to the accused.

Clarke C. J. Reid & Chatterji J

PFUMAN v. THE BROWN, 3 Pun. W. R. 72.

DIGEST OF INDIAN (CRIMINAL) CASES.

Arms Act—District Magistrate if a Court. When receiving applications for licences under the Indian Arms Act, 1871, a District Magistrate is not acting as a Criminal Court but as an executive officer. Consequently he is not empowered to fine under sub sec. 8 of the Central Provinces Court Act, 1904, a person who writes such an application for hire as though that had contravened a rule made under clause (a) of sub sec. (I) *ibid*. Such rules apply only when the act complained of is done in a Court subordinate to the Court of the Judicial Commissioner or in the later Court itself.

SURAJ V. EMPEROR, 4 Nag. L. R. 134.

Cr. P. Code, sec. 30—Jurisdiction to try offence under sec. 304, I. *P. C. Held*, also that a Magistrate invested with powers under sec. 30, has no jurisdiction to try an offence *prima facie* falling under the 1st clause of sec. 304, Indian Penal Code
Chatterji J.

HAZARA V. RISHEN, 3 P. W. R. 84.

—————**Ss. 96, 537.—Defective warrant not cured.** Sec. 537 cannot give legal effect to a defective warrant. The District Magistrate on receiving information of the commission of an offence cannot issue a warrant under sec. 96 (1) Cr. P. Code, before he has acted judicially upon the information so received.
Stephen & Holmwood J. J.

RASH BEHARILAL MONDEL V. THE KING EMPEROR, 12 C. W. N. 1075

—————**Sec. 107, 36—Magistrate to whom person is not sent under s. 107 (3) cannot exercise the power of committing to custody under sec. 107 (4)—Section 36 does not confer such power.** A Magistrate has no jurisdiction to remand a person to custody under section 107 (4) of the Criminal Procedure Code when such person is not sent to him by another Magistrate under section 107 (3). Section 36 of the Code cannot, when read with section 107 (3), be construed as conferring such jurisdiction on a District Judge.
F. B.

CHIDAMBARAM PILLAI V. EMPEROR, 31 Mad. 315.

—————**Ss. 107, 113—Security to keep the Peace—Joint inquiry against several persons—Necessity of specific findings against each.** Where a joint inquiry has been held against several persons, who were called upon to furnish security to keep the peace under s. 107 of the Criminal Procedure Code, there

must be a specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down.

Stephen & Holmwood. J. J.

AJODHYA PRASAD SINGH v. EMPEROR, 35 Calc. 929.

———**Secs. 117, 556**—*Appeal heard by the District Magistrate who directed the prosecution—Waiver by accused—Legality of—Transfer of case under Chapter VIII outside local Jurisdiction.* Where a District Magistrate was not only actively concerned in the institution of proceedings under Chapter VIII, Criminal Pro. Code, but where those proceedings originated in, and with him in the discharge of his duties as executive head, *held*, that sec. 556, Cr. P. C., was a bar to his entertaining the appeal and that mere waiver on the part of the accused could not vest him with jurisdiction.

Held further, that proceedings under section 120, Cr. P. Code, can be outside the local limits of the district within which such proceedings have been lawfully instituted. In *Re Amar Sing*, 16 All., 9 dissented from.

CROWN v. MAHOMED SHAH KAMIL, 1 Sind, L. R. 98.

———**Sec. 122.**—*Security for good behaviour—"unfit"—Discretion of Magistrate.*—The unfitness of a surety under section 122 Criminal Procedure Code is not limited to pecuniary unfitness.

The question as to whether a particular person is 'fit' or not, is for the Magistrate to decide. The matter is left to his direction, which is not fettered in any way.

Geidt & Woodroff J. J.

IN RE JALIL 8 C. L. J. 243.

———**Secs. 133, 138, 140, and 141**—*Jury failing to return the verdict—Appointment of a fresh jury—Magistrate's discretion.*—Where in a proceeding under sec. 133 Cr. P. C. the jury appointed under sec. 138 failing to return the verdict on account of certain causes, the Petitioner appeared before the Magistrate and prayed for the appointment of a fresh jury, but the Magistrate refused the prayer and proceeding under sec. 141 Cr. P. C. made his original order absolute.

Held—That the Magistrate in so doing did not exercise a proper discretion. He ought to have in the exercise of his discretion appointed a fresh jury in compliance with the prayer of the Petitioner.

Brett & Ryves J. J.

SHIB CHANDRA v. HRIDAY CHANDRA 12 C. W. N. 1047.

———**Ss. 260, 261**—*Summary trial—Jurisdiction of the Court to hold—*

How to be determined—In determining whether a case is triable summarily under the provisions of the Criminal Procedure Code, the facts stated in the petition of complaint as well as the sworn statements of the complaint must be taken into consideration. *Bishu v. Sabar Mollah* 29 Cal. 409 explained.

Brett & Ryves J. J.

PHANINDRA NATH v. THE EMPEROR, 12 C. W. N. 1041.

———**Sec. 144**—*Breach of the peace, apprehended—Power of a Criminal Court to take property in dispute into custody—proceeding under sec. 144—High Court's power to interfere—Restoration of matters to the original condition.* Where disputes and differences having arisen between head members of a church and its secretary, the Magistrate drew up a proceeding under sec. 144 Cr. P. C., and passed an order forbidding anything that might tend to disturb public tranquility at the same time directed with the consent of both parties that certain articles concerning which the parties were in dispute be removed into the custody of the Court and should remain there for two months or until the decision of a civil suit regarding before the High Court.

Held—That the Court's custody of the articles was wholly without jurisdiction and the High Court has power to order that matters should be restored to exactly the same condition as the Magistrate found them before he passed the order removing them into Court's custody.

Holmwood & Ryves J. J.

LEONG NUW v. TEHIM CHUN, 12 C. W. N. 1049.

———**Sec. 145**—*Division of crops—Magistrate—Jurisdiction of.* A Magistrate has no jurisdiction to order a division of the crops on the land subject-matter of proceedings under section 145, Criminal Procedure Code between the parties.

Mitra & Caspersz J. J.

RAM NARAIN SAHU v. KAILASH SINGH, 8 Cal. L. J. 242.

———**Sec. 145**—*Possession—Dispute concerning land—Jurisdiction of Magistrate—Proper question for determination—Doctrine based not on oral evidence, but on settlement proceedings.* The only question, which a Magistrate has to decide in a proceeding under sec. 145 of the Criminal Procedure Code is, as to who is in actual possession of the dispute land. Where the Magistrate, while holding that the oral evidence of actual possession was in favour of one party, proceeded to discuss and decide as to the legal effect, under the Bengal Survey Act, of a recent order of an Assistant Settlement Officer, passed in an inquiry into a boundary dispute between the parties, awarding possession to the opposite party, and also as to the

maintainability under the circumstances of proceedings under sec. 145 of the Code, the civil remedies available to the defeated party, the legality of the above order and his power to set the same aside, and directed the first party to be maintained in possession in accordance with such order:—*Held*, that the Magistrate had acted without jurisdiction in going into these matters instead of determining the question of actual possession on the evidence in the case.

Rampini & Sharfuddin J. J.

KOCHAI FAKIR v. ROMESH CHANDRA BISWAS, 35 Cal. 795.

———*Dispute relating to land—Jurisdiction of Magistrate—Irregularities in procedure—Omission of personal and local notices—Filing of written statements—Ex parte Order—No opportunity given to a party of adducing evidence.* Where the Magistrate drew up a proceeding under sec. 145 of the Criminal Procedure Code in the presence of the representatives of the parties and fixed a day for the hearing of the case, but there was no personal service of notices on the parties nor local publication thereof and neither party filed written statements, and the Magistrate, after taking the evidence of one witness on behalf of the second party, declared him to be entitled to possession:—

Held, that the proceedings were extremely irregular and had prejudiced the first party, and that the irregularities were so great as to amount to a want of jurisdiction, such as would justify the interference of the High Court.

Rampini & Sharfuddin J. J.

AHMED CHOWDHRY v. PARRATI CHARAN ROY, 35 Cal. 774.

———*Sale—certificate—No possession either actual or symbolical.* Held that where there was neither actual nor symbolical delivery of possession but only the issue of a sale—certificate, the right of the certificate holder cannot be protected by proceedings under sec. 145 of the Criminal Procedure Code.

Munro & Sankaran Nair J. J.

RAGHAVA UYANGAR v. KRISHNA SAMI AIYER, 4 M. L. T. 180.

———**S. 145.**—*Possession by the manager of a joint Hindu family can be protected by a Magistrate by proceedings under s. 145 of the Code.* The managing member of a coparcenary governed by the Mitakshara law has a recognised position of superiority with well-defined rights of management and possession independent of the consent of the other members of the coparcenary. A Magistrate has jurisdiction to protect a manager in such possession by proceedings under section 145, Criminal Procedure code.

Benson & Boddam J. J.

BHASKARI KASAVARAYUDU v. BHASKARAM CHALAPATIRAYUDU 31 Mad., 318,

———**Ss. 145, cl. 1—Preliminary order, defective—Grounds for likelihood of a breach of the peace not set forth.** Held that where the preliminary order under S. 145 (1), Criminal Procedure Code does not set forth the grounds upon which the Magistrate is satisfied that there is a dispute likely to cause a breach of the peace, the Magistrate has acted without jurisdiction.

Munro & Sankaram Nair J. J.

POCSUKA V. TAUDALGARA, 4 M. L. T., 213.

———**S 190, 192 and 254—Cognizance by District Magistrate without a complaint—Validity of—**One F sent an application to the District Magistrate stating that the accused had taken from him Rs 30 for bribing a Magistrate before whom a prosecution was pending against F, and that the accused had declared that he had paid the amount to the magistrate, which as a matter of fact he had not done. The District Magistrate after recording the statements of F, and examining some of his witnesses, transferred the papers under section 192 Cr. P. C., to the Resident Magistrate for proceeding under section 612, I. P. C. Held, that the proceedings were not bad on the ground that there was no complaint made before the District Magistrate by some person having a personal knowledge of the fact that a bribe was offered. The District Magistrate could take cognizance of the offence otherwise than on a complaint, and sections 190 192 and 254, Cr. P. C., validated the proceedings.

K. EMP. ALLAHWABAYO wd. KHUDABAKSH. 1 Sim. L. R. 119.

———**S. 190 (B) (C)—Cognizance under.** The question referred to the Full Bench was when a complaint as defined in sec. 4 of the Criminal Procedure Code is presented by the complainant to a Magistrate, and the Magistrate records on it that he takes cognizance of the case under sec. 190 (c) of the Criminal Procedure Code, has the Magistrate taken cognizance of it under clause (a) or clause (c) of subsection (1) of section 19. *Per Ormond J.* If the Magistrate had jurisdiction to take cognizance of the offence either under clause (a) or clause (c) he must be deemed to have taken cognizance of the offence under clause (a). But the fact that a complaint has been submitted to a Magistrate does not preclude the Magistrate from taking cognizance of the offence under clause (c) provided he exercises a sound discretion.

In the present case the Magistrate, under the Municipal Act has no jurisdiction to take cognizance of the offence under clause (c). In these circumstances the Magistrate must be deemed to have taken cognizance under clause (a).

Irwin C. J. Hartnoll & Ormond J. J.

MESIDI V. THE RANGOON MUNICIPAL COMMITTEE 14 Bur. L. R. 250

———**Sec. 190 (C)—Action under—preliminaries—**To justify a Magistrate in taking cognizance of an offence under sec 190 (C), Cr. P. C. upon information received from any person other than a police officer, the information need not contain all the allegations necessary to be proved to establish the offence; it is sufficient if enough is alleged to justify the Magistrate in dealing judicially with the matter.

What allegations or how much of the information should be recorded by the Magistrate in such a case it is difficult to lay down in general terms, but when it is found that the recorded information is sufficient to justify the Magistrate in considering that a prima facie case has been made out the High Court will not interfere with the Magistrate's action in taking cognizance under sec. 190 (c).
Stephen Holmwood J. J.

RASH BEHARI LAL MONDAL v. THE KING EMPEROR 12 C W. N. 1075.

———**S. 195 (a)—Sanction to prosecute—Village Munsiff whether Subordinate to Sub-Magistrate.** Held, that a Village Munsiff is not an officer Subordinate to the Sub-Magistrate within the meaning of Sec. 195. *Queen v. Periannan*, 4 Mad. 241, not followed.

Munro & Abdur Rahim J. J.

A. VENKATASAMI v. A NARASIMHAYYA; 4M L. T.

———**S. 195, cl. (6)—Appeal Court granting sanction if refused by first Court.** Every Court holding a proceeding under a power conferred on it by the Code of Criminal Procedure in India, exercises a criminal jurisdiction, either ordinary for special and irrespective of its appellate and ordinary business, is a "Criminal Court" in respect of such proceeding, within the meaning of that term in S. 435 of the Code of Criminal Procedure.

An order under S. 195, sub-section (6) of the said Code, once made by a competent Court, exhausts the power of that sub-section, and such order cannot itself be made the subject of further revision under the same sub-section.

Such an order, when made by what is a Civil or Revenue Court with reference to the nature of its ordinary business, can only be revised by the High Court under S. 439 of the Code of Criminal Procedure. The power conferred by sub-section (6) aforesaid should be most sparingly used especially in the direction of granting a sanction to prosecute which has been refused by the lower Court on reasonable grounds.

SHANKAR RAO v. SHAIKH, 4 Nag. L. R. 40.

———**Ss. 209, 439—Committing Magistrate—His functions of**

inquiring into a case triable by a Court of Session. Held, that, where there is credible evidence, which, if believed, *prima facie* shows grounds for thinking that the accused has committed an offence triable by the Court of Session, it is the Magistrate's duty to commit him to that tribunal, and that the Magistrate exercises wrong discretion if he takes upon himself to discharge the accused—the words "sufficient grounds" in S. 209, Cr. Pro. Code, do not mean sufficient grounds for conviction. *Chatterji J.*

HAZARA V. BISHEN, 3 P. W. R. 84.

———S. 233—*Charges under Ss. 124 A and 153 A, I. P. Code at the trial.* The accused was charged under S. 124 A, I. P. Code, in respect of one article, and separately charged under Ss. 124 A and 153 A, I. P. Code in respect of another article, held that he could be tried at one trial on both the charges. *Davar J.*

EMPEROR V. BAL. G. TILAK, 10 Bom. L. R. 848.

———Ss. 234, 235—*Object of—Alternative.* Ss. 234 and 235 (1) of the Criminal Procedure Code are intended to be alternative and not cumulative in their operation that is three sets of offences, each set being unconnected with the other sets, but comprising different offences connected together so as to form one transaction, though the offences in each set are of the same kind as the offences in the other sets, cannot be joined together in one trial. The trial was held illegal owing to the joinder of six charges—viz., one under S. 201 and two under S. 193 relating to a report and evidence about the death of Po Thine and one under S. 201 and two under S. 193 relating to the report and evidence about the death of Pan Gaing?

Irwin C. J. & Ormond J.

S. P. CHATTERJI V. EMPEROR, 14 Bur. L. R. 242.

———Ss. 260 and 261—*Summary trial—Jurisdiction of the Court to hold—How to be determined.* In determining whether a case is triable summarily under the provisions of the Criminal Procedure Code, the facts stated in the petition of complaint as well as the sworn statements of the complainant must be taken into consideration. *Brett & Rynes J. J.*

PHANINDRA NATH CHATERJI V. THE EMPEROR, 12 C. W. N. 1041.

———S. 342—*Object of.* Held, that the examination of an accused is for the purpose of enabling him to explain any circumstances appearing in evidence against him, and not for the purpose of filling up a gap for the prosecution; that the confession was clearly inadmissible, and that, therefore the accused should not have been questioned about it.

The Sessions Judge held that the confession was corroborated by the accused having pointed out to the police the places where certain acts were committed. *Held*, that the effect of the accused having done so was merely to accentuate or particularise his verbal statements made to the same effect; that his conduct in doing so was nothing more than making a statement by signs instead of words and should be treated as part of his statement and that, if the prosecution relied on which statements as being true, that is to show that the accused had an accurate knowledge of the circumstances such statements were incriminating statements in the nature of confession and therefore, inadmissible in evidence. *Irwin C. J. & Ormond J.*

GAUNG V. KING EMPEROR, 14 Bur. L. R. 233.

———S 342. cl. 2—*Exemption under—Voluntary affidavit in support of a transfer application—Indian Penal Code, Ss 182 and 211.* Where the accused applied to the District Magistrate for a transfer of the proceedings pending against him in the Court of a Subordinate Magistrate, and supported his application by an affidavit making false allegations against the trying Magistrate.

Held, that he could not claim exemption under S. 342, clause 2, Criminal Procedure Code.

And that the offence committed by him fell under S. 182, Indian Penal Code, and not S. 211, Indian Penal Code.

IMPERATOR V. KHAN MAHOMED, 1 Sind L. R. 124.

———Ss. 397, 123—*Imprisonment under—effect of.* A person committed to prison under S. 123, Criminal Procedure Code is not undergoing a sentence of imprisonment within the meaning of S. 397 of the Criminal Procedure Code; so where a person undergoing imprisonment under S. 123 was convicted under S. 176, and sentenced.

Held, that the sentence of imprisonment for the offence under S. 176 should be ordered to commence from the date of the order.

Sankaran Nair J.

In re JOGHI, 4 M. L. T. 223.

———Ss 439, 88—*High Court's power to revise order passed by a Magistrate investigating a claim of a third party to the attachment of the property of an absconding offender.* *Held*, that with regard to the amended definition of the term 'Judicial proceedings' given in S. 4 (m) of the Code of Criminal Procedure, the order passed by a Magistrate in the investigation of the claim by a third party to the property of an absconding offender attached under S. 88 of the Code is open a revision by the High

Court under Ss 435, 439 of the said Code.

Clark C. J. & Reid J.

ILAMDIN v THE CROWN, 3 P. W. R. 81.

—S 476—*Prosecution for giving false evidence, six weeks after the alleged commission of the offence—Legality thereof* The decision of the Full Bench reported in 3 M. L. T. 79 that an order under S. 476 should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings, considered and doubted.

Benson & Munro J. J.

In re RYMIAN NAIK, 4 M. L. T. 269.

—Sec. 488—*Res judicata—Effect of previous order.* The parties were husband and wife, living apart. On the 2nd March the respondent applied to the Subdivisional Magistrate for an order for the applicant to pay an allowance for the support of their child. The Magistrate wrote "Respondent offers to maintain the complainant in a separate house, but he refuses to accept the offer. She alleges no ill treatment. I have consequently no power to interfere. Case dismissed."

This Magistrate was transferred and on the 6th April the respondent applied to his successor for an order for maintenance for the child. The case was duly heard and an order made to pay Rs. 5 per month. This application was made on the ground that the order dismissing the first petition was a bar to the second, and that there was no evidence that the petitioner had any means. On behalf of the applicant reliance was placed on *Lariaei v. Ram Dial*, 5 All. 224.

Held that *res judicata* does not bar any proceedings on general principle but only by special enactment, as contained in sec. 13 of the Civil Pro. Code & sec. 408 of the Cr. Pro Code.

Held also that, where a Magistrate to whom an application is made, knows or has reason to believe that a similar application on the same facts has been adjudicated on, he ought not to act on the application without considering the previous decision, but that, when he does so, he is not wrong in law, nor are his proceedings bad and void, regardless of the merits.

Irwin C. J.

MOUNG PO v. MA KAJIN, 18 Bur. L. R. 260.

—S. 476—*Jurisdiction of High Court—Civil jurisdiction—Civil Procedure Code s. 622—Charter Act (24 and 25 Vict. C. 104), s. 15 Nature of High Court's revisional jurisdiction—Criminal proceedings, stay of, pending civil appeal—Stay not justifiable, when it would defeat ends of justice.* Where the District Judge has initiated proceedings under s. 476

of the Criminal Procedure Code,—*Held*, first, that it is doubtful, if the High Court exercising civil jurisdiction has power to stay the criminal proceedings; *Held*, secondly, that the provisions of s. 15 of the Charter Act of 1861 do not appear to give the High Court power to interfere in the case; *Raj Kumari Debi v. Rama Sundari Debi* 23 Calc. 610, followed. *Held*, thirdly, that the High Court must have regard to the nature of the revisional jurisdiction and must not allow what would virtually be an appeal from the order; *In re Alamdar Husain* 23 All 249, followed in principle. *Held*, lastly, that when on the evidence in a case, the Court below is of opinion that it is in the highest degree desirable that the enquiry should be conducted both in the interests of justice as well as of the accused and of all parties concerned as speedily as possible the High Court would not be justified in staying proceedings, merely because a civil appeal from the judgment, out of which the criminal proceedings were initiated, is pending in the High Court. *In re Bal Gangadhar Tilak*, 26 Bom. 785, followed.

Rampini C. J. Ryves J.

HEM CHANDRA RAY v. ATAL FEHARI RAY, 35, Calc. 909.

—————**Sec. 488.**—*Reason for refusing to live with husband* The applicant's wife, with his approval went to stay for a while with her mother, and while she was there, a serious quarrel took place, which resulted in Mrs. Garraty refusing to return to her husband.

Applicant early in 1907 took a woman to live with him as his mistress, and she lived with him up to the time when his case came on hearing before the Magistrate in March 1908, the application for maintenance having been filed on the 19th of that month.

Before the Magistrate Mrs. Garraty agreed, to return to her husband within a week on his putting away his mistress and promising to have nothing more to do with her, but subsequently she refused to abide by that arrangement.

Held that, at the date of the application, Mrs. Garraty had an unanswerable reason for refusing to live with her husband, and that her right to refuse was not demolished by the fact, even if it be a fact, that the husband was driven to concubinage by his wife's continual refusal to live with him. *Maung v. Ma Ou Bwin*, 2 L. R. R. 46., *Ma Nyein v. Maung*, U. B. R. 1902 Crim. Pro. P. 7 approved

Held that, an offer made in Court by the husband to give up his mistress does not deprive the wife of her right of refusal to live with her husband.

Irwin C. J.

E. G. v. RUTH, 14 Bur. L. R. 240.

———**Sec. 528—Transfer of case by District Magistrate—***are remanded by Sessions Judge—Notice to counsel person.* The District Magistrate has no jurisdiction to transfer a case from the file of a Subordinate Magistrate to whom it has been remanded by the Sessions Judge for further enquiry and less so if he gives no notice to the other side.

Stephen & Holmwood J. J.

AKHIL DOME v. RAM CHANDRA MANDEL, 8 Cal. L. J. 241.

Madras Salt Act, sec 87—Contract to transport Government Salt—Deduction of certain amounts due—Suit to recover the amounts—Whether statutory bar. *Held*, that sec. 37 of the Salt Act is no statutory bar to an action on a contract brought against the Secretary of State to recover certain amounts deducted with reference to that contract, and also other sums spent in carrying out the contract, if the amounts are otherwise recoverable.

Sankaran Nair & Abdur Rahim J.

R. M. M. R. M. v. THE SECRETARY OF STATE, 4 M. L. T.

Municipality—Encroachment upon Municipal land—Act XX of 1891, sec. 95—Evidence—Blyth's map of Amritsar Municipality *Held*, that, in the absence of any direct evidence of encroaching upon the land of a Municipal Committee a conviction under sec. 95 of Act XX of 1891 is illegal.

The evidence of an official, who has got no personal knowledge, based upon a comparison of some old Municipal maps is, after all, a mere opinion

Chatterji J.

MUHAMMAD v. THE CROWN, 3 P. W. R. 88.

Penal Code Secs. 124 A, 153 A—Sedition—Intention—attempt—Criminal Procedure Code. Secs. 233, 234, 235, Joinder of Charges—Special Jury—Application for.—The essence of the crime of Sedition consists in the intention with which the language is used. But this intention must be judged mainly by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of any thing he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed.

Exposition of Sec. 124 A. I. P. C. as laid down in *Q. E. V. Jogeendra* (1891) 19 Cal. 35, *Q. E. v. Amba Prasad* 19 All. 55, *Q. E. v. Laxman* 2 Bom. L. R. 286, and *Q. E. v. Vinayak* 2 Bom. L. R. 304 approved of and followed.

Explanations 2 and 3 to S. 124 A. I. P. C. are intended to protect Criticism of Government measures, and of administrative and executive action of Government, and they give a perfect freedom to journalists, to publicists, to orators and public speakers, to discuss the measures and administrative acts of Government, to disapprove of them, to attack them, and to use forcible and strong language if necessary, and to do every thing legitimate and honest in bringing before the public or the Government the fact that their measures or their actions are disapproved by a section of the public or by that particular speaker or journalist. But no publicist, no journalist, no speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse or calculated to engender feelings of enmity, hatred, or disloyalty against Government.

A man is supposed to attempt some thing which would be the natural and reasonable consequences of his act. If he fails he does not fail because he did not attempt but he fails from other causes. Whether he fails or whether he succeeds, the law says no attempt should be made to excite feelings of hatred, contempt, or disaffection. In judging articles which are charged as seditious, due allowance should be made for oriental modes of thought and expression, and for high flown or classical language.

Davar J.

EMPERS v. PAL, G. TILAK 10 Bom. L. R. 848.

———**Sec. 153 A—meaning of**—Sec. 153 A, Indian Penal Code, means that no subject of the Crown is entitled to write or say or do any thing whereby the feelings of one class of His Majesty's subjects will be inflamed against another class of his subjects.

Davar J.

EMPEROR v. BALGANGADHAR TILAK, 10 Bom. L. R. 848.

———**Sec. 175—Intentionally omitting to produce a document accused person—Incriminating document—Liability to produce—Criminal Procedure Code Sec. 94**—An accused person cannot be called upon under section 94 of the Criminal Procedure Code, to produce a document which would incriminate himself. His failure to do so is not an offence under section 175 of the Indian Penal Code.

Brett, and Ryves J. J.

ESWAR CHANDRA GHOSHAL v. The Emperor 8 Cal. L. 8 320.

———**Sr. 299, 304—Deadly blow presumption**—It cannot always be assumed that, when a man strikes a blow on the head, he intends

to cause death or injury sufficient to cause death (Murder, Sec. 300 of the Penal Code), or such injury as is likely to cause death (Culpable homicide Sec. 299.)
Shaw C. J.

NGATUN v. EMPEROR 14 Bur. L. R. 264.

———**Sec. 342**—*Policeman charged—Good faith.* Information of a cognizable and non bailable offence was laid down at the police station, and the applicant was deputed to investigate. The applicant did so, and finding the offence proved, arrested the accused (Pothew), handcuffed him in spite of protest, took him to the police station, and refused to release him on bail. The applicant was convicted of wrongful confinement, the ground of the conviction being that Po Tham had not committed the offence complained of but only a non-cognizable offence.

Held that, when a policeman acts under colour of his office and apparently in good faith, he should not be convicted without clear proof that his action was illegal.
Irwin C. J.

MAUNG AUNG v. EMPEROR, 14 Bur. L. R. 202.

———**Sec. 359**—*Essentials of.* An accused person may be guilty of kidnapping a minor from lawful guardianship, even where there is no evidence of the accused having in any way enticed the minor away and where the evidence is that the minor of her own motion left her guardian's keeping and proposed elopement to the accused, and went with him of her own free will.
Shaw J.

NAG TE HLA v. EMPEROR, 14 Bur. L. R. 202.

———**Section 363**—*Parent—legal keeping of—intention to make unlawful use of the minor—Misdirection.*—The evidence for the prosecution proved that on a certain day the minor daughter of the complainant was dressed up in her best clothes and ornaments, that in the morning the mother of the child saw her go to the house of the accused, that in the afternoon the accused and the child were seen going together, that in the evening the child could not be found though a search was made for her and the accused questioned about her, and that a few days thereafter the body of the child was found from some bushes near the accused's dwelling in a decomposed state covered up in sack, with all her ornaments on her body except one small silver necklace.

Held, that the accused had been rightly convicted of an offence under section 363, I. P. C., but that there was not sufficient evidence to support the conviction of murder under section 302 I. P. C.

Per Hayward, A. J. C.—"If a girl goes on a visit with or without the knowledge of the guardian she is still in the legal keeping of her parent, and further, that it is not necessary that there should be any intention to make an unlawful use of the minor to constitute an offence of kidnapping."

Imperator vs. Jetho, 6 Bom. L. R. 785 followed.

IMPERATOR V. VILAITALI SHAH 1 Sind L. R. 104.

—————**Sec. 463 & 471—Forgery and using a forged document—Dishonest or fraudulent intention, necessity of proving—False receipt—Preparation or use, of an offence.** Where the accused a tahsildar of an estate prepared a false receipt acknowledging on the part of his employer the receipt of certain papers and it was proved that some of those papers were in the office of the estate but as to the rest the prosecution failed to prove that they were not also in the office of the estate.

Held—That the accused could not be convicted of an offence under sec. 471, I. P. C., as the prosecution had failed to prove any dishonest or fraudulent intention on the part of the accused in making use of the receipt. The preparation of a false receipt acknowledging on the part of a certain person the receipt of certain documents, after having made over those documents to that person, does not amount to an offence under sec. 463 I. P. C., nor does the use of such a receipt constitute an offence under sec. 479 I. P. Code.

Brett & Ryves J. J.

RAM PRASAD V. THE EMPEROR, 12 C. W. N. 113.

—————**Ss. 471—Forgery—Dishonestly using as genuine a forged document—User—Filing document, but not tendering it in evidence—**The mere filing of a document in Court without tendering the same in evidence does not constitute user of it within section 471 of the Penal Code.

Stephen & Holmwood J. J.

AMBIKA PRASAD SINGH V. EMPEROR, 35 Calc. 820.

Penal Code—Sedition—Incitement to insurrection—Reasonable criticism of Government—Admissibility of seditious articles not forming the subject of the charge—Liability of printer for seditious matter in a newspaper—Act XXV of 1867, s. 7—A reasonable criticism of the action of Government in a particular matter without any attempt to create hatred or contempt against it is not sedition, but an incitement to insurrection falls within the scope of S 124 A of the Penal Code. Seditious articles published in the same newspaper, not forming the subject of the charges, on which the prisoner is being tried at the time, are admissible to show the intention of the person, who printed or published the latter. Section 7 of

Act XXV of 1867 makes the printer or publisher responsible for every thing appearing in the newspaper, whoever the author of the seditious articles may be, unless he can prove absence from the office of the paper in good faith and without knowledge that during his absence seditious matter would be published. It is not absence in good faith for the printer to go away, but with full knowledge of what is going to happen in his absence and for the purpose of shirking his liability. *Queen Empress v. Bal Gangadhar Tilak*, 22 Bom. 112. dissented from. *Ramasami v. Lokanada*, 9 Mad. 387, approved of. *Rampini C. J.*

EMPEROR v. PHANENDRA NATH MITTER, 35 Calc. 945

———**S. 471**—*Dishonestly or fraudulently using as genuine a forged document—Dishonest or fraudulent intention—Receipt for documents actually bound—Forgery.* Accused was charged with having fraudulently or dishonestly used a document which purported to be a receipt granted to him by the manager of a Ward's Estate for certain papers and which receipt was alleged to be false. Subsequently some of the papers mentioned in the receipt were on search found in the estate office while the other papers had not been searched for.

Held that these facts were not sufficient to show that user of the document was fraudulent or dishonest or that the accused had committed any offence.

Held further, If the papers had actually been deposited in the office and the accused had subsequently prepared a false receipt for them, it would not be forgery. *Brett & Ryves J. J.*

RAM PRASAD MAITY v. THE EMPEROR, 8 C. L. J. 317.

Practice—Charter Act, S. 15—Letters Patent, Ss. 28 and 29—Powers of High Court to stay proceedings in Criminal Courts—Some matter in appeal. *Held* that the High Court has jurisdiction to direct criminal proceedings ordered by the Civil Court to be stayed till the disposal of the appeal from that Civil Court. *Sankaran Nair & Ablur Rahim J. J.*

In re L. JOGIAH, 4, M. L. T. 186.

———**Committing Magistrates—Responsibilities.**—Committing Magistrates should not shirk their responsibilities of deciding doubtful cases by making unnecessary committals to the Sessions.

CROWN v. AHMED SHAH, 1 Sind L. R. 103.

Workman's Breach of Contract Act (XIII of 1859)—Residence of master or complainant—Outside Presidency Towns—Expiry of term of contract—Enforcing contract—Return of money advanced—Punishment

for non return. The provisions of Workman's Breach of Contract Act apply to areas to which the Act has been extended by S. 5, and this notwithstanding that the master or complainant may not reside or carry on business in a Presidency Town.

Held further (Stephen J. dubitante). The remedies under S. 2 of the Act are interlocked and interdependent. If one has lapsed, the other has lapsed also. The master has the option of enforcing the return of the money advanced or the performance of the Contract. If the option has become impossible by the expiry of the term, the Magistrate's jurisdiction is gone.

Stephen & Holmwood J. J.

NARSINGH PRASAD SINGH V. KING EMPEROR, 8 Cal. L. J. 312.

—————*Notice to accused—Complaint under S. 182, I. P. Code*
When a complaint of an offence under S. 182 or S. 211 of the I. P. Code (duly sanctioned or not requiring sanction is presented to a Magistrate, it should be disposed of according to law, and there is no provision of law requiring him to first give the accused person an opportunity of proving the truth of the charge he had made. *Empress v. Gangarm*, 7 C. P. L. R. 6 distinguished.

EMPEROR V. GHANSRAM, 4 Nag. L. R. 186.

DIGEST OF INDIAN (CRIMINAL) CASES.

Cantonment Code, (1899), sec. 66 (1)—*Carrying meat exposed to public view—Servant's offence—Master's liability.* The offences aimed at by sec. 66 (1) of the Cantonment Code are personal offences and not offences which can be committed by delegation.

Hence a master cannot be punished under the section for an act of his servant in carrying meat in a bullock cart exposed to public view, which is not proved to be committed with his knowledge or authority.

Basil Scott C. J. & Chandavarkar J.

EMPEROR v. JAFFAR HAJI ISMAIL, 10 Bom. L. R. 1052.

Criminal Pro. Code, secs. 36, 65, 107, (3) and (4), 114, 344.—*District Magistrate ordering detention under 107 (4)—Person not sent before him under sec. 107 (3)—Jurisdiction.* Where the accused was not sent before the District Magistrate by any other Magistrate under sec. 107 (3) of the C. P. Code, the case did not come under 107 (3) and the order by the District Magistrate detaining the accused in custody was made without jurisdiction. Even if sec. 36 of the Code can be construed as giving powers not specifically referred to in Sch. III Cr. Pro., the power is not one which can vest in the Magistrate to whom the person is to be sent. An order made under the provisions of sec. 167 (4) of the Code cannot be supported under sec. 114 of the Code.

F. B.

In re V. O. CHITTHAMBARAM, 2 Cr. L. Repl. 209.

—————**Sec. 88**—*Attachment of accused's undivided interest in joint property—Absconding after being accused of murder.* Held that the interest of the accused in undivided property cannot be attached under sec. 88 Cr. Pro. Code, for absconding.

Miller J.

EMPEROR v. CHINNA, 2 Cr. L. Repl. 236.

—————**Sec 117 (4)**—*Associated together—Joining of persons with conflicting interest.* Where in an inquiry under sec. 117 (4) parties who have been in conflict with one another have been joined together. Held that the joinder was an authorized and illegal one as such parties cannot be said to have been associated together in the matter under enquiry within the meaning of sec 117 (4) Cr. Pro. Code. *Kamat v. Emperor, 11 C. W. N. 472, Subramania Aiyar's case, 25 Mad. 61* referred to. *Wallis J.*

In re GANPATHI BHATTAR, 2 Cr. L. Repl. 209.

———S. 123 and 397—*Act No. IX of 1894 (Prison Act) section 3 (3)—Security for good behaviour—Imprisonment on failure to find security—“Sentence.”* Held that where a person is ordered by a Magistrate to be “detained in prison” pending the orders of the sessions Judge under section 123 of the Code of Criminal Procedure such person must be considered as a person undergoing a sentence of imprisonment and not merely as an under-trial prisoner detained in custody

Held, also that an order for imprisonment on failure to furnish security for good behaviour is a “sentence” within the meaning of section 397 of the Code of Criminal Procedure. (F. B.)

EMPEROR V. TULA KHAN, 30 All. 334.

———S. 133—*Procedure—Obstruction to a public way—Jury.* Where, at the request of a person upon whom notice has been served under section 133 of the Code of Criminal Procedure a jury is appointed under section 138 of the Code, it is within the competence of the jury to decide as to the validity of an objection that the way alleged to have been obstructed is not a public way. It is not for the Magistrate to decide whether such an objection is raised *bona fide* before referring it to the jury. *Held also* that there is no special procedure laid down by the Code to be adopted by jury appointed under section 138 in coming to a finding on the questions submitted to them.

Held also that a person who has applied for a jury under section 138 is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bona fide* claim of right. *In the matter of the petition of Lachman*, Weekly Notes, 1900, p. 180 followed.

Knox J.

EMPEROR V. RAM BILAS, 30 All. 364.

———S. 145—*Attachment and release—Revision petition against the order—Request to reattach pending disposal of the revision petition.* There is no provision in the Criminal Procedure Code which authorises a Magistrate's Court to reattach the subject of dispute pending the disposal of a revision petition against its order. The object of allowing attachment by the Magistrate under S. 145, Cr. Pro. Code is to prevent an imminent breach of the peace.

Munro J.

FEEDIGA V. HULIGAMMA, 2 Cr. L. Repl. 237.

———S. 195—*Sanction—Criminal Proceedings—Cognizance of a case by the Magistrate.* Where the complaint having been filed and a sanction subsequently obtained, any action taken by the Magistrate before the

grant of the sanction is illegal; but that does not prevent the Magistrate from taking cognizance of the complaint after the sanction has been obtained.

Chandavarkar & Heaton J. J.

In re MAGNINATH SHIVNATH, 10 Bom. L. R. 1053.

———**Ss. 203, 253, 259**—*Penal Code, S. 323—Dismissal of case under S. 259—Reentertainment of a fresh complaint on the same facts.* Held that a Magistrate who has discharged an accused person under S. 259, Cr. Pro. Code can re-entertain a fresh complaint on the same facts. *Chinnathurubi v. Salla*, 28 Mad. 310 followed and *Emperor v. China* 29 Mad. 128 referred to.

Munro & Sankaran J. J.

In re RUDRA GOUNDAN, 2 Cr. L. Repl. 239.

———**S. 234 and 235**—*Charge—Misjoinder of charges—Illegality*). An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. Held, that this was an illegality not covered by the provisions of section 537 of the Code of Criminal Procedure.

Knox & Aikman J. J.

EMPEROR v. MATA PRASAD, 80 All. 351.

———**Ss. 234, 235, 236**—*Scope of.* Sections 234, 235, 236 and 239 of the Criminal Pro. Code referred to as exceptions in S. 233, are not mutually exclusive; otherwise the provisions of S. 236 or 237 can never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under S. 234. The Legislature hardly intended that a joint trial of three offences under S. 234 should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the acts complained of; Ss. 235 and 236 may be resorted to in framing additional charges where the trial is, under S. 234 of the offences of the same kind committed with a year.

Scott C. J. & Batchelor J.

In re BAL GANGADHAR, 10 Bcm. L. R. 773.

———**Ss. 250, 345**—*False or vexatious charge—Compounding of offences—Procedure.* An inquiry as to whether a charge is not frivolous or vexatious under S. 250 of the Criminal Procedure Code can only be instituted for the purpose of deciding whether compensation should be paid to the accused person.

Proceedings under S. 250 are inapplicable where the accused person has himself by agreement with the prosecutor arrived at a settlement and been

a party to the compounding of offences. *Scott C. J. & Onandavarker J.*

In re HARKISHANDAS HARIDAS, 10 Bom. L. R. 1056.

———**Ss. 434 and 439—Conviction of two offences—appeal—One of the convictions set aside—Same sentence retained—Enhancement** Where on appeal from conviction for two offences, the conviction for one offence was set aside and that for the other retained. *Held* that to retain the same sentence in appeal amounts to enhancement of the sentence and is contrary to law. *Paramaswami v. Emperor*, 30 Mad 48 followed.

White & Miller J. J.

In re SOOMASUNDARAM, 2 Cr. L. Repl. 211.

———**Secs. 497, 498.—Explosives act (VI of 1908)—Bail when to be granted—Likelihood of absconding—Evidence of complicity—what evidence sufficient—Police—officer swearing to existence of evidence—Delay in production of evidence—Remand—Bail—cancellation of—**On a question whether bail should be granted by the High Court to certain persons undergoing trial under the Explosives Act (VI of 1908) *Held* that the decisions of English Courts are not necessarily a safe guide in interpreting the section of the Criminal Procedure Code.

It is not correct to say that in exercising its discretion under sec. 498 of the code in granting bail to under trial prisoners the High Court should confine its attention only to the question whether the prisoner is or is not likely to abscond.

There may be other circumstances also which may effect the question of granting bail to accused persons who are alleged to have committed crimes of a grave and serious nature. It is the right of an accused person to demand that the charge against him should be tried without any unreasonable delay and such delay will dispose the Court to grant bail.

Under s. 167 of the Code a magistrate on the mere perusal of the entries in the police diaries relating to the case to which the accused have no access may from time to time authorise the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter he can under sec. 394 by a warrant remand an accused for any term not exceeding 15 days at a time if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by such remand.

Where on the accused being placed for trial a police officer of superior rank swore to the existence of evidence implicating the accused and it did not appear that the production of the evidence was being unreasonably delayed, bail was refused.

Bail was allowed, however to those in regard to whom the prosecution evidence was being unreasonably delayed.

A Magistrate may commit an accused person who has been released on bail if a *prima facie* case is made out against him by the sworn testimony given before him.

Sharfudin & Coxe J.

RAJAH NARENDRA LAL KHAN v. THE KING EMPEROR, 13 C. W. N. 43.
(See the next case).

———Secs. 497, 498—*Explosives Act (VI of 1908)*—*Bail when to be granted—Object of non bailable offence—Likelihood absconding—Seriousness of offence charged—Evidence of offences charged—Evidence of complicity—What kind of evidence sufficient—Prosecution, opportunity, to produce evidence—Remand—conspiracy—case of cancellation of bail.*—Petitioners who were charged with offences under the Explosin act (VI of 1908) which are non-bail'able and of a very serious nature, were refused bail by the enquiring Magistrate.

Held (per *Mitra J. Coxe J.* dissentiente) on an application to the High Court sec. 498 of the Criminal Procedure Code for bail, that the main question for consideration was, whether there were reasonable grounds for believing that the Petitioners were guilty of offences of which they were accused other considerations must also arise and one of these which has always guided Courts of Justice both in England and India, is whether there are any grounds for supposing that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an enquiry or trial.

An accused may ordinarily be released on substantial bail until reasonable grounds are made out for presuming his guilt.

In *re Johur Mull* (10 C. W. N. 1903 1906) referred to.

If after a remand evidence of an incriminating character is not adduced and if the prosecution had already sufficient time to adduce such evidence, the court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then under sec. 497 cl (2) of the code release the accused on bail whatever be the nature of the offence though the preliminary enquiry should proceed.

Manikram Mudali v. The Queen (2) I. L. R. 6 Mad. 63 (1882) approved.

Whether there are reasonable grounds or not for believing that the accused are guilty of the offences charged must be decided judicially, that is to say, there should be tangible evidence on which if un rebutted the Court might come to the conclusion that the accused might be convicted.

The statement by a witness in the witness box that he has seen a certain act done, an act of an incriminating character, may be sufficient; as to whether the witness can be fully relied on or not is a question for subsequent consideration.

But if there be no evidence whatsoever or evidence of a very flimsy character on the face of it, the inference would naturally be, after a reasonable time has elapsed since the beginning of the enquiry that there are no reasonable grounds for supposing that an accused is guilty.

The prosecution must however have a fair opportunity according to the nature of the case of adducing evidence of a really incriminating character. The detention of an accused under trial is not intended to be penal but its object is to secure attendance. The seriousness of an alleged offence and some evidence of its perpetration by the accused would, however justify detention.

Bail allowed to an accused person may be cancelled by the Magistrate if upon further evidence produced a case is made out against him.

Mitra & Coxe J. J.

Jamini Mullik v. The King Emperor 18 C. W. N. 51.

———**Sec. 565—Penal Code, sec. 176—Omission to notify under that section if punishable.** Held that the information required to be given under sec. 565 (4) Criminal Procedure Code could not be said to be required for the purpose of preventing the commission of an offence within the meaning of clause 2 of sec. 176, I. P. C., and cases under sec. 565, (4) should be dealt with under cl. 1 of sec. 176, I. P. C. *Munro & Pinhey J. J.*

In re HUSSAIN BEG, 4 M. L. T. 325.

Excise Act, (N. W. P.), sections 44 (2), 48 and 57—Definition—Excise officer Jurisdiction.) Held that a head constable is an Excise Officer within the meaning of section 57 of the Excise Act, 1896. *Queen-Empress v. Makunda*, 20 All., 70, followed. *Knox & Aikman J. J.*

EMPEROR v. LACHMI NARAIN, 30 ALL. 377.

Evidence Act, s. 30—Confession—Joint trial—Plea of guilty by one of the accused—Use of confession against the rest—Criminal Procedure Code, ss. 271, 342. Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession that he may make be used against them. *Queen Empress v. Paltua* 23 All., 53 followed

Richards & K. Husain J. J.

EMPEROR v. KHEONAJ, A. W. N. 1908, 241.

———**s. 30.—Confession, Admissible as Evidence against a Co-accused—Held**, that the confession of a prisoner affecting himself and another person who was being tried with him for the same offence is, when duly proved, admissible as evidence against both; but a confession unsupported

by other testimony is evidence of the weakest kind against a co-accused. The Court must in each case decide what weight should be attached to it.

Chamier & Pigott J. C.

RAGHUBIR ALIAS BIRU *v.* KING-EMPEROR 11 O. C. 328.

Forest Act, Madras sec. 21 (f), 33, 36,—Transport of sandalwood—Acquittal—forfeiture. Where a trader was accused of illegal transport of sandalwood under sec. 21 (f) of the Forest Act and of offences against certain newly made rules under which the accused was not than aware of and the accused was acquitted of the former charge though convicted of the latter. *Held*—that under the circumstances no order of confiscation should have been passed
Miller J.

K. BALKRISHNA ROW *v.* EMPEROR, 2 Cr. L. Repl. 236.

Madras Abkari Act, (1 of 1882), sec. 62—Peon—Words “Abkari Officer.” A peon is not an abkari officer within the meaning of s 62 of the Madras Abkari Act, 1 of 1886.
Munro J.

In re PANCHAPPA CHETTY, 4 M. L. J. 455.

Madras Town Nuisance Act, sec. 3 (6)—Exposing fish for sale in the drain along street—Objection. *Held* that where owing to the accused's selling fish on the road side near the market, numbers of people collected there and caused an obstruction it was an offence under sec. 5 (6) of the Town, Nuisance Act. *Venkatramma v. Emperor*, 28 Mad. 17 referred to.

Benson & Boddam J. J.

PUBLIC PROSECUTION, 2 Cr. L. Repl. 235.

Penal Code, sec. 188—Order—Promulgation of—Disobedience to the order—Picketing—prohibition of—Public peace. A member of young men, including the accused were found preaching and patrolling the roads near the liquor shops in the Belgaon city, some shouting “Don't drink” and using offensive language in addition to those words such as “If you drink it will be as if you drink the blood of your children.” The District Magistrate thereupon issued orders under sec 144 of the Criminal Procedure Code. But the persons would continue to do them from the verandh of a private house adjoining public place.

Held (1) that the objectionable language such as “if you drink you will be drinking the blood of your children” speaks for itself; no further evidence than the words used is required to prove that it has a tenancy to cause annoyance to persons lawfully employed under sec. 188 of the Indian Penal Code.

Held (2) that the fact that the place from which the accused did the shouting against drink was verandh of a private house, whereas the order of the District Magistrate which forbade shouting applied only to a public place made no difference. For if a man standing on a private place adjoining a public road shouts into the road words deliberately meant for persons using that road, he is as much shouting in a public place as if he stood on the road itself and shouted.
Chandavarkar & Heaton J. J.

EMPEROR *v.* GONIND VENKATSH JALJI, 10 Bom. L. R. 1047.

— — — — — **SS. 302, 304, 325, 328 and 329—Administration of dhatura for the purpose of facilitating robbery—Death of person to whom dhatura**

is so administered—Offence not murder, but only causing grievous hurt. Where for the purpose of facilitating robbery, dhatara was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was *held* that in respect of the traveller who died the offence committed was that punishable under section 325 of the Indian Penal Code, *viz.*, grievous hurt; and in respect of the travellers who did not die the offence committed was that defined by section 328 of the Code. *Queen Empress v. Tulsha* 20 All, 143 not followed.

Richards & K. Husain J. J.

EMPEROR *v.* BHAGWAN DIN, A. W. N. 1908, 223.

———**Sec. 379—Stealing fish in a tank at night—Owners of the right of fishery watching—with a gun—Firing on the intruders and hurting them.**—*Held* that the watchers did not exceed their right of private defence of their property by the use of the gun in hurting the intruders who had come to steal fish from the tank in respect of which the watchers had the right of fishery.

Boddam & Miller J. J.

KATAMRADDI *v.* EMPEROR 2 Cr. L. Repl. 238.

———**Secs. 380, 457—Accused deaf and dumb from birth—Admission of guilt by signs not enough for conviction.** Where the accused though not of unsound mind could not be made to understand the proceedings in Court and yet admitted his guilt by signs intelligible mostly to his uncle. *Held* that it is not safe to convict him on such admission of guilt.

Sankaran Nair J.

In re RAIRATT, 2 Cr. L. Repl. 240.

Penal Code Ss. 419 and 511.—Representation by false certificate to get reinstated into office—No damage or harm to the officer.—Where a person attempted to get himself reinstated in the post of the Karnam by the production of a certificate of having passed a certain examination and representing that the certificate referred to him while in fact it referred to another.

Held, that where it is not shown that such representation caused damage or harm to the officer to whom the representation was made, a prosecution under secs. 419 and 511 of the I. P. Code could not be maintained but a prosecution under sec. 182 I. P. C. might lie.

Abdur Rahim J.

IN RE MANIKKAM 4 M, L. T. 324.

Privy Council—Leave to appeal to the Privy Council in Criminal case—Grave and substantial injustice to be shewn—Criminal Procedure Code, secs. 233, 284, 235, 236, and 237 and 239—Joinder of charges. Before granting leave to appeal in Criminal cases to the Judicial Committee of the Privy Council, the High Court must be satisfied that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done

Scott C. J & Batchelor J. J.

In re BAL GANGADHAR, 10 Bom. L. R. 973.

Workmen's Breach of Contract Act, (XIII of 1859), sec. 12.—Summary trial. An offence under the Workmen's Breach of Contract Act 1859, is not to be punished summarily. *Chundavarkar & Heaton J. J.*

EMPEROR *v.* BALU, SALEJI, 10 Bom. L. R. 1026.

DIGEST OF RECENT ENGLISH CASES.

Appeal—Limitation—Delay—Advice of legal adviser—That the legal adviser thought that it was impossible on the facts of a case to appeal from an order is not, said the Court of Appeal, a ground for extending the time.
Buckley & L. J.

NICHOLSON v. PIPER 1907 L. 828, T. R. 16)

Company—Adopting new regulations—Notice—When a company propose to adopt new regulations it is not sufficient in the notice summoning an extraordinary general meeting for that purpose to state in general terms that the business is to consider, approve and adopt articles of association.
Kekewich J.

NORMADDY v. IND, COOPE &c. LD. (1907 L. J. 969, L. T. 10 W. N. 229, T. R. 57),

—————**Contributory—Transfer of share to a pauper to avoid liability**—If a share-holder shortly before the company goes into liquidation, transfers his share to a pauper so as to avoid liability, the Court can in determining whether the transfer shall be put on the "A" list of contributories, consider any equities there may be between the transferor and the transferee.
Parker J.

DISCOVERIES FINANCE CORPORATION LD. RE (1907 W. N. 213; T. R. 12 S. J. 825; L. J. 548).

Distress—Exemption from—Gas-engine lent on Hire purchase system—A gas-engine lent on the hire-purchase system is not exempt from a landlord's distress.
(Phillimore & Walton J. J.)

CROSSLY BROS. LD. v. LEE (1907 L. T. 11; S. J. 39; L. J. 691, T. A. 35)

Employer—Liability for keeping dangerous machine—If an employee uses a machine in itself perfect, but dangerous he is not under a duty to see that those who use it are properly instructed in its use.

(Phillimore & Walton J. J.)

GREENWOOD v. GREENWOOD. (1907 T. R. 24; L. T. 11)

Ferry—Franchise—Interference with bridge—The building of a bridge for foot-passengers is not an interference with a franchise ferry. The decision of *Neville J.* (1907 1, ch. 437) approved. A franchise of ferry merely gives an exclusive right to take passengers across by boat. (*Hopkins v.*

G. N. R. 2 Q. B. D, 224 followed, dictum of *Blackburn J.* in *R. V. Cambrian railway*, dissented from.)

DIBDEN v. SKIRROW (1907 L. J. 683, L. T. 34, W. N. 225; T. R. 70)

Injunction—Practice—The Court will grant an injunction to restrain a son, grown up and capable of earning his living, from visiting his mother's house, and living there and generally annoying her so that her health is seriously affected.

Coleridge J.

STEVENS v. STEVENS (1907 S. J. 825, T. R. 20)

Landlord & tenant—Right of tenant to release right of way—A tenant cannot release for life of right of way enjoyed in connection with settled land over another tenement or purchase out of capital money the right of way release of a enjoyed over the settled land.

Joyce J.

BROTHERENTON v. (1907 S. J. 44, L. J. 709, W. N. 530, L. T. 62).

Lease—Covenant by lessor—Land tax—If a long lease, granted in pursuance of a building agreement, contains a covenant by the lessor to pay the land tax and indemnify the lessee therefrom, the lessee cannot deduct from his rent the whole of the land tax.

MANSFIELD v. RELF (1907, L. J. 707, L. T. 59, W. N. 235 T. R. 79).

———**Covenant to repair—Underlease**—If a lease contains a covenant to keep the premises in repair, and the lessee makes an underlease of part of the premises and covenant, for himself and his assigns with the underlessee to observe the covenant to repair so far as it concerns the part of the premises not comprised in the under lease, and then assigns the lease, the assignee is not liable to the underlessee on this covenant.

Alverstone C. J. Buckley & Kennedy L. J. J.

DEWAR v. GOODMAN (1907, L. T. 660 W. N. 227, T. 62).

Suit—Maintainability against local authority—Malicious Act—An action will not lie against a local authority for maliciously refusing to approve of plans for the drainage of a house in their district, the proper remedy is to apply for a mandamus

Vaughan Williams L. J. & Bigham J.

DAVIS v. MAYOR OF BROMLEY (1907 S. J. 823, T. 11; L. J. 547).

Will—Execution—A testator wrote his will on a sheet of paper, and then signed his name at the top of a separate sheet. He then produced the two sheets to two witnesses, and holding the sheets together in his hand acknowledged his signature. The witnesses thereupon signed their names at the foot of the first page. *Held*, that the will was properly executed since the testator intended his signature to operate as an execution, and the two sheets were attached at the time of attestation by his holding them together

Bargrave Deane J.

LEWIS v. LEWIS (1907 L. J. 691, S. J. 31 T. 45)

DIGEST OF RECENT ENGLISH CASES.

Company—Debenture improperly registered—Liquidator cannot get it declared void—The liquidator of a company cannot claim to have a registered debenture declared void on the ground that it has been improperly registered. The registrar's certificate is made conclusive evidence, and the court cannot go behind the certificate, which is conclusive as to the validity of the charge against unsecured creditors. In this case the Court expressed no opinion as to the position of the debenture holders between themselves.

Moulton & Farwell (L. J. J.)

YOLLAND v. YOLLAND (124 L. T. 105; (1907) W. N. 249; 42 L. J. 738).

——— **Winding up—requirements of affidavit alleging fraud**—When a petition for the winding up of a company contains allegations of fraud against officers of the company, the affidavit in support must contain the facts of the alleged fraud. The ordinary "Statutory" affidavit referred to in Rule 29 of the Companies—(Winding-up) Rules, 1903, is not sufficient.

Parker J.

LONDON & HULL SOAP WORKS, LTD. RE. (1907) W. N. 254; 124 L. T. 130, 42 L. J. 772.

Divorce—Lifeinterest in a bequest, lost by—If there is a gift by will to A. for life, then to A's wife, B. during her widowhood, B. loses her life interest if she obtains a Divorce from A,

The gift is to a named person "during her widowhood." No doubt *prima facie* it is to that person by nomination, but she cannot take it unless she is A's widow, and as the marriage is dissolved before A's death, she is not his widow.

Parker J.

JONES v. KETTLEWELL, 42 L. J. 742; 124 L. T. 109.

Jurisdiction—Foreign Court—Becoming member of a foreign partnership. A man by becoming a member of a foreign partnership does not submit himself generally to the jurisdiction of the foreign Court.

The ownership of real estate in a foreign country binds the owner to submit to judgments of the foreign Court so far as they affect such real property, but it does not carry with it a submission to the general jurisdiction of the Courts, and therefore, partnership in a foreign firm does not in

the absence of express agreement constitute a general submission on the part of a person neither resident nor domiciled in that country. *Besquet v. MacCarthy*, 2 B. & P. 951, not followed.

Alverstone C. J., Buckley & Kennedy, L.J.J.

MMANUEL v. SYMON (1907) W. N. 236; 124 L. T. 84; 42 L. J. 7237.

Light and Air—Right to—After 20 years user—Agreement to pay for use of light—Cannot sue for obstruction. The owner of a building, who after enjoying the flow of light over his neighbour's land for more than twenty years uninterruptedly, signs a memorandum agreeing to pay one shilling a year for the use of the light, cannot maintain an action in respect of an obstruction of the light. The right to light is not absolute and indefensible, even after the expiry of twenty years' enjoyment, unless and until some action or suit is commenced in which this right was in question; until that occurred the right remains inchoate. The only material period to be considered is the twenty years immediately before action, and in the present case the light during a portion of that period had been enjoyed by consent or agreement expressly made for that purpose by writing. *Parker J.*

HYMAN v. VAMDEV, (1907) W. N. 250; 42 L. J. 736; 134 L. T. 128;
52 S. J. 114.

Master and Servant,—Garage firm supplying driver—Driver's negligence. If the owner of an electric brougham contracts with a garage firm to garage the brougham, supply electricity and a driver, and by the negligence of the driver a third person is injured whilst the driver is using the brougham for his own purposes and contrary to the orders given by the owner, the garage firm is liable for the damages. *Ridley J.*

NORRIS v. WOLSELEY Co. LD., 52 S. J. 116.

Master & pupil—Authority to inflict corporeal punishment. An assistant master or mistress has authority to inflict corporeal punishment on a pupil of a public elementary school. The ordinary authority of the head teacher in the school to inflict corporeal punishment on a child extends to responsible teachers who have charge of a class. The teacher of a class is entitled to use the ordinary means of punishment, provided that the punishment inflicted is moderate, is not dictated by a bad motive, is such as is usually administered in schools and is such as the parent may expect his child to receive. *Phillimore & Walton J. J.*

MANSELL v. GRIFFIN, 1908, 24 T. R. 67; 52 S. J. 59.

Tort—Right of support—No compensation for risk of future damages.

In an action by a surface owner against the owner of the underlying minerals for damages caused by the withdrawal of support, compensation can not be given for the risk of future damage. It is undoubted law that a surface owner has no cause of action against the owner of a subjacent stratum who removes every atom of the mineral contained in that stratum unless and until actual damage results from the support.

Therefore depreciation in the value of the surface owner's property brought about by the apprehension of further damages gives no cause of action by itself.

House of Lords.

WEST LEIGH COLLIARY CO. LD. TUNNICLIFF & HAMPSON LD. 42 L. J. 755; 52 S. J. 93; (1907) W. N. 249; 124 L. T. 128.

Woman.—*Instrument not explained to—Invalidity of.* If a creditor prepares a guarantee and sends it to the debtor for him to obtain his wife's signature to it, and the wife signs it without being informed of the contents of it and without understanding it and without independent advice, the creditor cannot enforce the guarantee. The creditor, having employed the debtor to procure the surety's signature, was affirmed with notice of the invalidity of the transaction in equity.

Williams L. J., Barnes P. & Bigham J.

CHAPLIN & CO. LD. V. BRAMMALL, 24 L. T. 129.

AMERICAN CASES.

Bailment—*Liability of Storekeeper—Theft from pockets of customer.* A storekeeper is not to be responsible for the theft of valuables from the pockets of clothing of a customer which is laid aside to try on garments which the customer desires to purchase where the customer knowing that the clerks are busy, proceeds to wait upon himself, and, to his knowledge there is no one but himself there.

WAMSOR V. BROWNING, 10 L. R. A 314.

Conspiracy—*Restraint of trade—Commodity—article of commerce.* In determining whether or not a contract or combination is in unreasonable restraint of trade, it is immaterial whether or not the commodity which is the subject-matter of the contract or combination is of prime necessity, if the commodity is an article of legitimate trade or commerce.

PACAHULAS COKE CO. 10 L. R. A. 268.

Evidence—*Good character of wife—Prosecution of husband.* Evidence of the good character of the wife is inadmissible in a prosecution of

her husband for murder of her alleged paramour, to show that she was not guilty of conduct which accused assigned as a reason for his crime.

SHIPP, 10 L. R. A. 335.

Libel—*Responsibility of editor—Publication in his absence.* The responsibility of an editor of a newspaper for the publication of a libel without his knowledge, at a time when he is absent from the office, is denied in.

FOLWELL V. MILLER, 10 L. R. A. 332.

DIGEST OF RECENT ENGLISH CASES.

Copyright—Act of 1882, S. 1—International copyright—Exercise of in England. If the owner under international copyright of the exclusive right of public performance of any musical composition desires to retain such right in England he must print in the English language and not in his own or any other foreign language, the notice required by S. 1 of the Copyright Act of 1882 upon the title page of every copy published in England.

Neville J.

Sarpy v. Holland, 124 L. T. 239 ; 43 L. J. 17; 1908, W. N. 19.

Husband and Wife—Guarantee signed by a wife for her future debts. If a creditor requires a guarantee from the debtor's wife for future debts and posts the guarantee to her husband who procures his wife's signature and posts the guarantee back to the creditor, the wife would not be liable on the guarantee if it appear that the she had no independent advice and was not informed by the husband of the contents of the document and did not understand it when she signed it. (C. A.)

Chaplin v. Bramall, 124 L. T. 129.

Money lender's Act 1900—Suit by—Jurisdiction. If a money lender does in fact carry on his business at some place which is not his registered address, he cannot sue on contracts made at such place.

Lawrence J.

Staffordshire Co. v. Hunt, 124 L. T. 198.

Principal and Agent—False representation by agent—Insurance—Recovery of premia. K insured the life of her brother with defendants and paid one year's premium, she then told one of defendant's agents that she intended to give the policy up and he informed her that at the end of five years, she would be entitled to a free policy or a return of all the premiums paid; when the five years were up K claimed a free policy and on that being refused, sued for a return of the four year's premiums. *Held*, that K was entitled to have the premiums back. If an agent makes a false statement which is out side his authority, the principal cannot retain the property thereby acquired. (C. A.)

Kettlewall v. Refuge Ass. Co. 124 L. T. 195, 1908, S. J. 158.

Promissory Note—Stamp advalorem. *Held by Channel J.* that every promissory note must be stamped with advalorem duty and not with

a penny stamp only like a bill of exchange, even if it is made payable on demand or at sight or on presentation.

Hetinger v. Cohn, 124, L. T. 294; 1908, W. N. 24; 43 L. J. 46.

Surety—Discharge of—promissory note—If A becomes a surety to B for the payment by C. of 100 £ due on a promissory note expressed to be payable on demand and the creditor agrees with the debtor not to demand payment of the note so long as the debtor pays £ 10 a month, the surety is not discharged for because until demand is made, the promissory note continues operative and thus differs from a bill payable on a stated day.

Lawrence J.

Bellingham v. Hurby 52 S. J. 131.

Trade name—Passing of goods—The carthusian monks were expelled from France in 1904 and their property vested in a Government official. The monks had made and sold a liquor called “chartreuse” for over a hundred years. The expelled monks went to Spain and continued to make the liquor there. Held that the monks were entitled to an injunction to prevent the French official using the word “chartreuse” for liquor made by him from the monks’ recipe without clearly distinguishing it from that made by the monks. The English trade mark of the monks had not passed to the French official but only their property in France.

C. A.

Rex v. Leionturner 124 L. T. 195.

Trustees—Will—who—executors of the last surviving trustee—The executors or administrators of the last surviving trustee under a will are themselves trustees of that will if they choose to act as such.

Eady J.

Re Waidains 77 L. J. Ch. 12.

Will—bequest—mistake—effect of—A by his will gave a bequest to the six children now living of his by his first wife in equal shares; at the date of the will there is only one such child alive but when A dies there are living that child and five grand children of A by his first wife and seven children by his second wife; Held that the word “six” should be rejected as a mistake and the one child only take.

Joyce J.

Maddison v. Gill 124 L. T. 196 1908. W. N. 10.

Will—forfeiture clause—against public policy—effect of—A by his will devised real estate to A and personalty in trust for B, with a gift over in each case if the beneficiary shall enter into the naval or military services of the country; Held that the forfeiture clause is void as its tendency is against public policy.

Eady J.

Beard v. Hall 1908 W. N. 18.

DIGEST OF RECENT ENGLISH CASES.

Contracts—*Municipal corporation—Trading as electric light authority—Whether contract must be under seal.* If a Municipal corporation trades as an electric Light authority, its contracts in connection with the supply of electric light need not be under seal. *Ridley J.*

Bourne v. Mayor of Marylebone, 1908, W. N. 52; 52 S. J. 281; 24 T. R. 322.

———*Against morals—promise to marry on the death of a wife.* A promise by a married man to a woman to marry her on the death of his wife is not enforceable as being against public morals if the woman knew at the time that he is married. *Phillimore J.*

Spicers v. Hunt, 124 L. T. 197; 42 L. J. 792; 1908, W. N. 16.

———*Breach of—Maintainability of suit.* A and B are rival traders. A sells goods to C on the condition that he shall not sell them to B. B's agents induce C to sell goods to them by falsely representing themselves to be principals, C acting innocently. A can maintain an action against B if he can prove that he has suffered damage through B having induced C to break his contract with A. It is an actionable wrong by illegal means to induce a person to break his contract with a third person to the detriment of that third person.

National Phonograph Co. v. Edison Phono. Co., 52 S. J. 156; 1908, W. N. 8.

Copyright—*Painting unpublished—Innocent—Publication of pirated copies.* The painter of an unpublished picture has a right to obtain damages from a person who innocently published pirated copies of the picture. The publication of unpublished pictures amounts to a conversion and innocence is no defence in an action for conversion.

Swinfen Eady J.

Mansell v. Valley Printing Co., 1908, W. N. 41; 43 L. J. 90; 24 T. R. 311.

Interest—*Legacy.* When a legacy is given to an adult person, subject to the obligation of maintaining infants, the legacy carries interest from the end of the year after the testator's death for the adult person is the primary object of the testator's bounty and not the children. *Eady J.*

Crane, 1908, W. N. 18.

Landlord and Tenant—Surrender of a lease by a tenant—New lease without agreement as to fixtures—Tenants right to remove the fixtures put up during first tenancy. A tenant after surrendering his lease and taking a new lease without any agreement about fixtures can not remove trade fixtures put up by him during the first tenancy. On the surrender of the tenancy and taking a new tenancy a lessee loses the right to remove tenant's fixtures in the absence of a stipulation to that effect. Parker J.

Laschalles v. W. Colf, 43 L. J. 91, 12 4 L. T. 380

Lease—Covenants—Lessee of minerals—Action by assigns of surface owner. If a lessee of minerals covenants with his lessor and the other surface owners or occupiers for the time being (who are not named or made parties of the lease) to pay for all damage caused by working the minerals, an action can be brought on the tenant by the executors or assigns of the surface owner.

Cozens Hardy M. R. Fletcher Moulton & Farwell J. J.

Forster v. Elvert Colliery Co, 1908, W. N. 26., 43 L. J. 56., 25 T. R. 265.

Libel—Report of official receiver—charges against managing director—An official receiver is not liable to be sued for damages for libel if in his report to the court under s. 8 of the Companies Winding up Act of 1890 he charges the managing director with fraud. O'hannell J.

Bottamley v. Brougham. 3 L. J. 59.

Marriage—Judicial separation—Suicidal tendencies amount to cruelty for the purpose of obtaining a decree of judicial separation if a husband has repeatedly attempted suicide and in the opinion of medical men is likely to develop homicidal mania.

Baron v. Baron. 52 S. J. 282.

Master and Servant—Covenant in restraint of business—wrongful dismissal—A servant is not liable to pay damages for breach of a contract not to engage in a business similar to that carried on by his employer after he has been wrongfully dismissed by the employer, for the wrongful dismissal amounts to a total repudiation of the contract by the employer and the servant is emancipated from all the restraint of the contract as if it had determined. Cozens Hardy M. R. Moulton & Buckley. J. J.

General Bill Posting Co. v. Atkinson. 1908, W. N. 36, 43 L. J. 73, 124 L. T. 384, 52 S. J. 240.

Nuisance—Obstruction of highway—An obstruction of the high way, e. g. a coffee stall which does not appreciably interfere with the traffic of a street is not indictable nuisance.

Rex v. Barthalomeuz, 124 L. T. 269; 52 S. J. 208; 43 L. J. 41; 1908 W. N. 20.

Party wall—Owners of duties of as to repairs—If A and B are the owners of a party wall in which there are fireplace and flues and A has an easement allowing him to send his smoke up the flues she is under no obligation to repair B's side of the party wall so as to prevent the smoke from finding its way into B's house. He is entitled to use his easement fairly and reasonably and in the absence of any evidence of negligence on his part he is not liable if the smoke finds its way into B's house. Each party is responsible for the repair of his own moiety only.

Jones v. Pritchard, 124 L. T. 359, 43 L. J. 91; 24 T. R. 309. *Parker J.*

Pauper—Test—Property in possession. The test to determine whether a person is a pauper or not, is not whether the person has so much amount in his pocket but whether he is "good for that amount" i. e. worth it.

C. A.

Kydd v Watch Committee of Liverpool, 1908, W. N. 26, 43 L. J. 55 52 S. J. 223, 24 T. R. 257, 24, L. T. 334.

Public—Member of—Right of to be present at a Municipal meeting. A member of the public has no right either as a member of the public or as aburgess and ratepayer or as press reporter to insist on being present at meetings of aborough council. The general principle is that constituents have no right to attend deliberative meetings of their delegates.

Cozens Hardy M. R. Moulton & Buckley L. J.

Tenby Corporation v. Mason, 43 L. J. 39; 124 L. T. 292; 24 T.R. 254.

Receiver—Purchase by. A receiver appointed in an action cannot purchase the property without the Court's sanction even though the sale is made by a mortgagee outside the action.

Cozens Hardy M. R. Moulton & Buckley L. J. J.

Nugent v. Nugent, 1908; W. N. 37; 43 L. J. 74; 124 L. T. 334; 52 S. J. 262; 24 T. R. 296.

Trust—Gift to charitable society—Purpose to be determined by charity. A gift to a charitable society to be applied for purposes not necessarily charitable, to be determined by the charity, is not a good charitable

gift.

*Cozens Hardy M. R. Moulton & Buckley L. J. J.**Shilton v. Freeman*, 52 S. J. 262.

Trust—Charitable Trust—uncertainty—A directed his trustees to employ the residue of his estate in instituting and carrying on a scheme for the relief of whatever religious denomination or belief they may be, who have shown practical sympathy either as amateurs or professionals in the pursuit of science in any of its branches whose lives have been characterised by sobriety, morality and industry and who are not less than 55 years of age or of aiding any scheme which now exists or may be instituted by others for that purpose. The next of kin contended that the bequest was void for uncertainty.

Held, that it was not so void.

(H. L.)

Weir v. Brown. 52 S. J. 261; 24 L. T. 358 1908; W. N. 400; 24 T. R. 308.

Trust—Unauthorized investment—Profit made good by trustee to the tenant for life. If a trustee invest the trust funds in an unauthorized investment which produces 5 per cent interest and then replaces the trust money and pays over to the tenant for life the 5 per cent interest, the remainderman cannot insist on having the excess of interest over what an authorized investment would have produced, treated as capital; the sole right of a remainderman is to have the principal replaced. This is not a case of a trustee having made profit from the breach of trust for he had paid back both the principal and interest to the trust estate.

*Cozens Hardy M. R. Moulton & Buckley L. J. J.**Slade v. Chaine*, 1908, W. N. 36; 52 S. J. 240; 43 L. J. 72; 124 L. T. 335.

Wager—Post dated cheque for a bet dishonour suit on—If a post dated cheque given for a bet is dishonored and that defendant asks for time to pay and the plaintiff agrees to take the cheque which is for a smaller amount than the debt and refrain from having the defendant post—at his club—the plaintiff can when the cheque is again dishonoured sue on the cheque.

*Lounrence J.**Goodson v. Baker*, 24 T. R. 338.

DIGEST OF RECENT ENGLISH CASES.

Contract.—*Uberrimal fide*—*Statement in proposal of insurance for life.* M. insured her life for £ 3000. The proposal did not disclose that M had suffered from temporary mental derangement but had recovered. M became insane again, and committed suicide. It appeared that M did not know of the first insanity but thought she was sent to a home for nervous break down.

Held, that there was no fraud by M., that the policy was void for non disclosure of material facts; and that the company must return the premiums.
Alverstone L. C. J.

JOEL V. LAW UNION, 52 S. J., 517.

Copy-right.—*Dramatic piece.* A owned the sole right of producing a farce entitled "The Mumming Birds" in the United Kingdom. The farce could not be reduced into writing. P reproduced this on a cinematograph as at the music hall, and sold films for public performance. A claimed an injunction.

Held, that as the farce was not capable of being printed and published, it was not a dramatic piece within the meaning of sec. 1 of the Dramatic Copy-right Act 1883. That the cinematograph reproduction of dramatic piece is an infringement of copy-right, and that the sale of films for a cinematograph reproduction is not such an infringement, the remedy lying against the person who actually executes the films.

Jelf J.

KARNO V. PATHE, 52 S. J. 499.

Husband and Wife.—*Pledging credit.* If husband and wife are living together and the husband makes the wife a sufficient allowance for house-hold necessaries, the presumption that the wife has implied authority to pledge the husband's credit for necessaries may be rebutted although he has not expressly forbidden her to pledge his credit.

A butcher sued a cab-driver for balance of amount for meat supplied for his house-hold for some three years, and ordered by the wife. Defendant allowed his wife a pound a week for house-hold necessaries and knew plaintiff was supplying the meat, but thought his wife paid cash for it.

Held that the allowance was sufficient and has been paid, and the wife could not pledge her husband's credit in a case like this.

SLATER V. PARKAR, 52 S. J., 478.

Injunction.—*Servant engaging in the same trade after leaving off service.* If P, is for many years a journey man served with H. P. & Co., a well-known firm of tailors in London and P discharges himself, and then

L and P start as tailors at East Burma and trade as "L & P, latter from H. P. & Co., and send out circulars stating "P has a reputation of 15 years successful experience with Messrs. Poole's Savite Row, London, and is therefore in a position to advise clients in the very latest styles" P's former employers cannot get an injunction. Parker J.

CINDEY v. LERWILL, 125 L. T. 33.

Landlord and Tenant. *Lighting stair case—liability of landlord.* If the owner of a building lets it out in sets of offices, and access is obtained by a stair case which is not let out, and there is no agreement in any case about lighting the stair case, but in fact each tenant has a light provided by himself outside his own door, and turns it out when he leaves for the night, and the servant of a tenant on an upper story coming down in the dark misses his way and has a fall which injures him he cannot recover damages from the owner of the building.

HUGGETT v. MIERS, 1908 W. N. 115; 125 L. T. 32, 43 L. J. 282; 52 S. J., 481,

Limitation.—*Suit on a cheque—Post dated—when period begins to run.* If a debtor gives his creditor a cheque for £ 28 on account of a simple contract debt on 10th May 1900, and the cheque is post dated 20th May, 1900, and at the debtor's request the check was not to be presented until 20th June 1900, on which day it was paid the statute of Limitation begins to run a fresh from 10th May. From 10th May. that being the date on which the cheque was handed to the creditor by the debtor. Bray J.

MARREOCO v. RICHARDSON, 125 L. T. 85, 52 S. J., 518.

Trust.—*Trustees power to invest—No express prohibition.* A will directed the trustees to invest the capital of the trust estate by leaving the same on deposit with a named bank at such rate of interest as they might be able to obtain.

Held that as the will did not expressly forbid the trustees to invest in any of the investments allowed by sec. 1 of the Trustees Act, 1893, they were not bound to invest only in the way specified in the will.

NEVILLE J. following RE MAIRE 49, S. J. 343, 1908 W. N., 131,

Will.—*Right to set off legacy against future debt.* If a legatee owes the testator a debt which is not payable until a future date, and the testator has left him a legacy which is payable at once the executors cannot retain the legacy to answer the debt. Warrington J.

RE ABRAHAM v. ABRAHAMS, 1908, W. N. 116; 43 L. J. 301.

Part III.

DIGEST OF RECENT ENGLISH CASES.

Contract for commission.—If A agrees with B to pay 5 percent., commission on the accounts of all customers introduced by B, so long as A does business with such customers, A's liability does not cease on B's death.
Neville J.

WILSON v. HARPER, W. N. 141, 125 L. T., 105, 43 L. J. 374.

Validity of Gift.—In 1906 S bought and paid for three debenture bonds to bearer. S showed the contract note to his wife, and stated he had bought them for her. Before the brokers delivered the bonds S died. The widow was one of the four executors of S, and proved his will.

Held, that the gift *inter vivos* was imperfect, but that the appointment of the wife as executrix made it good, on the principle of *Strong v. Bird*, 43, L. J. Ch 814, for all the personal estate vests in the eye of the law in each executor.
Neville J.

STEWART v. MELAUGHLIN, W. N. 147; 43, L. J. 357.

Wager, New Contract to pay.—H was a book maker, and the defendants were a partnership firm who lost £ 108 to H on betting transactions. The defendants sent H a cheque, but next day one of the partners asked H to hold over the cheque for a few days and not to publish the default to other book makers in which case they would pay by instalments. To this H agreed, and defendants paid him £ 25, £ 25, and £ 10, failed to pay the balance for which H now sued.

Held, that there was a new contract between H and defendants to pay based on a valuable consideration, and that H was entitled to judgment for the balance.
Darling J.

HYAMS v. STUART KING, W. N. 145, 52, S. J. 551.

—If a book maker sues for £ 559 due to him in respect of bets on horse races, and defendant pleads the Gaming Acts, and defendant wrote plaintiff asking that he would let the account stand over for a few weeks on term of 5 per cent., interest, to which plaintiff assented by telegram, the book owner's side is entitled to judgment. *Chaunvell J.*

GOODSON v. GRIERSON, 52 S. J. 599,

Workman's Compensation Act, 1906.—If fellow workmen of F, by way of practical joke, place the hook of a crane in his necktie and thereby lift him from the ground, and the necktie gives way and F falls fifty feet and is crippled for life, F's employer is not liable under the Act.

Cozens, Hardy, M. R. and Buckley & Keneddy J.J.

FITZGERALD v. CLARKE, 125, L. T. 147; 43 L. J. 371.

—————If a house holder is in the habit of sending for Hill to clean the windows of his house and pays him 6 s. 6d. a day, and this has been done at irregular intervals of about six weeks for a couple of years, and one day Hill falls from a window and is killed, compensation is not recoverable under the Act.

Cozens, Hardy, M. R. and Buckley & Keneddy L. J. J.

HILL v. BEGG, (1908) W. N. 151, 125, L. T. 148 43 L. J. 373; 52, S. J. 581.

Negligence—If a passenger alights from a train and is standing on the platform when he is struck by the door of a carriage which had been left open as the train moves out of the station, the railway Company is liable.
(H. L.)

TOAL v. NORTH B. R. Co, (1908), W. N. 136; 125, L. T. 104.

—————:O:—————

DIGEST OF RECENT ENGLISH CASES

Charities.—*gift to a trustee to apply to purposes he thinks fit.*—If a testator gives money to a person who holds a religious or charitable office upon trust to apply it for such charitable or other purposes as he thinks fit, it is not a good gift; it is uncertain.

Cozens Hardy, Farewell & Kenedy L. J. J.

REDAWDSON 52 S. J. 622. 125 L. T. 236.

Company—*Liability to promotor—registration and stamps paid by promotor.*—A company is not liable to repay to its promotor the fees and stamp duty he has paid on registering the Company. C. A.

IN RE NATIONAL MOTOR MAIL COACH CO. 43 L. T. 478. 1908 W. N. 172.

Construction—*gift—house and its contents.*—Where a testator gives to a legatee "his house and its contents" his house containing cash, notes, bonds, receipts, title deeds, everything—furniture &c. passes but not the bonds and securities for money which are only evidence of title.
Swinfen Eady J.

NEWSDON V. CROUCH 125 L. T. 237.

Copyright—*innocent infringement of unpublished drawings.*—A unlawfully copied certain unpublished drawings belonging to B, and A sold them to C who published them; C is liable for infringement of B's right of property in the unpublished drawing, and it is immaterial that he did so innocently.
C. C. A.

MANSELL V. VALLEY PRINTING CO. 52 S. J. 660; 43 L. J. 448; 1908, W. N. 173.

Costs—*Taxation.*—If by an agreement of compromise, A is to pay the costs of B, A can still have the bill of costs due by B to his solicitors taxed.
H. L.

HURST V. TOX 52 S. J. 684; 1908 W. N. 171; 43, L. J. 448

Damages—*Measure of—subsidence of a high way.*—Where a subsidence of a highway is caused by the defendants' wrongful act, the measure of damages is the cost of making an equally commodious road without unnecessary expense and not the cost of restoring the road to its former state.

mer level.

H. L.

LODGE HALES COLLIERY CO. LD. 43 L. J. 416; 1908, W. N. 158; 52 S. J. 620.

Insurance—insurable interest—wife.—A husband has an insurable interest in the life of his wife if she performs household duties and on her death he has to incur extra expense and employ a servant.

Prickford J.

GRIFFITHS v. FLEMING 24 T. R. 100.

Lease—underground support—seams of coal.—If A leases, to B seams of coal and reserves to himself the right to grant leases of the underlying minerals, such lessees cannot let down B's seam of coal for by reserving a right to grant leases of the underlying minerals, A had not reserved to himself by necessary implication a right to deprive B's seam of support.

Neinlle J.

BATTERLY CO. LD. 43 L. J. 400; 1908. W. N. 161.

Lottery—Gaming Act 1892—Limerick competition.—The proprietors of a weekly journal announced in their Journal that they would give a first prize of 300 £ for the best line in limerick competition; that coupons would be carefully examined; that each competitor was to send 6d. and the names of the winner were to be announced, in the Journal; A member filed a suit. *Held* that the selection of the winner being by chance, and not by merit the plaintiff could not sue—the transaction being a lottery;

Williams, Fletcher Moulton & Buckley L. J. J.

ELYTH v. FLURTON 52 S. J. 599.

Tort—discharge of one joint tortfeasor—effect of.—If a client sues a partner in a firm of solicitors for negligence in giving advice, and the action is compromised on the terms of the partner paying a sum of money in full discharge of all claims, the client cannot then again sue the other partner, the discharge of one joint feisor tort discharges all.

Chanell J.

FLAME v. OLIVER 52 S. J. 684.

Will—Construction—Substitutional gift. In the simple case of mere substitution of a gift, the new gift is subject to the same incidents and conditions as the original gift; this rule does not apply where the gift in the codicil is not in the same character as the gift in the will nor where the beneficiaries in the codicil are not the same as in the will.

Cozens Hardy M. R. Farewell & Kenedy L. J. J.

PAIN v. JOSEPH, 43 L. J. 417, 125 L. T. 237, 1908, P. W. R. 159.

DIGEST OF RECENT ENGLISH CASES

Animals.—*Dog bite*—*Liability of owner for injuries by.* If a man keeps an animal which is ferocious by nature, or an animal of a class not generally ferocious (e. g., a dog), but which is known to the owner to be ferocious, he is bound in either case to keep it secure at his peril, and is liable for harm done by it, even though, the immediate cause of damage is the intervening act of a third party.

Cozens Hardy M. R. and Farewell L. J. affirming Sutton J. J.

BAKER V. SUELL, 43 L. J. 682., 43 L. J. 476., 125 L. J. 310.

Charities.—If a testator gives the residue of his estate "in trust for the Roman Catholic Archbishop of Westminster for the time being to be distributed and given by him at his absolute discretion between such charitable religious or other societies, institutions, persons or objects in connection with the Roman Catholic faith in England as he shall in his absolute discretion think fit"—this is not a valid charitable gift.

Having regard to the words used it is impossible for the Court to say that it was not competent to the trustee to apply the gift to societies, institution persons or objects which were neither charitable nor religious; the testator had not indicated any body of beneficiaries who could invoke the aid of the Court and prevent the trustee from doing that which some trustees might do if there was no Court to call them in question, i. e., put the money into their own pockets, and, therefore, the gift was void for uncertainty.

Cozens Hardy M. R., & Keneddy L. J. J., affirming Eady J.

DAVIDSON NINTY V. BOURNE, 52 S. J. 622; 125 L. T. 239.

Contract—*Restraint of trade*—*Infant.* An infant of nineteen was employed as reporter by a Sheffield newspaper proprietor and signed an agreement which he fully understood, not to be in any way connected with a newspaper business carried on within 20 miles from Sheffield town hall after leaving the employment. When 22, he left the employer and was engaged by another newspaper as reporter within the 20 miles.

Held that an injunction would be granted. The Contract would have been binding on a person of a full age; it was reasonable, and for defendant's benefit within *De Francisco v. Barnum*, 45 Ch. D. 480; and defendant ought not now to be allowed to repudiate it. *Eve J.*

LENG V. ANDREWS, 52 S. J. 714, 43 L. J. 505; 125 L. T. 834.

Highway—Dedication of—Presumption as to. Continuous user by the public of a way raises a presumption of dedication by the owner for the use of the public. The owner of the soil can rebut this presumption by showing that owing to the condition of the title, such dedication had been impossible.

Warrington J.

FARQUHAR v. NEWBURY RURAL, 1908 W. N. 188.

Minor—Fraudulent Representation of full age—Loan. If an infant borrows money on a promissory note, and fraudulently represents that he is over twenty one years of age he is liable to be sued.

Roidly L. J.

LEVINE v. BROUGHAM, 24 T. R. 801.

Mortgage—Right of mortgage to. If a printer mortgages his lease hold or promises to B, and the mortgage deed does not mention fixtures or machinery or chattels, and then the printer obtains a printing machine from N., on the usual hire purchase agreement, and before the printer has paid all the instalments to N., the mortgagee takes possession, the mortgagee can claim the machine as against N.

The machine weighs about 15 tons, and rests on the floor simply by its own weight, but it was drawn by fixed mechanism to which it was attached for that purpose.

Held, that no part of the driving mechanism, was apart of the machine that the indirect attachment to the motive power did not make the machine; a fixture; and that the machine belongs to Naud not to the mortgagee although it is too big to remove without causing some damage to the building.

Eave J.

NORTHERN PRESS v. SHEPHERD, 52 Sol. J. 171.

Negligence.—Evidence of similar occurrences. The plaintiff claimed from the defendant damages to the extent of £ 30 for causing to the plaintiff a painful, irritating and disfiguring disease, known as barbers' itch, which he (the plaintiff) said was caused by the negligence of the defendant and his servants in keeping dirty tackle. Two other witnesses for the plaintiff, who had been shawed in the same month, stated that their chins had been cut, and that sores came out. The question was whether the evidence of these witnesses was admissible.

Held that the evidence was admissible, as it tended to show dangerous practices were carried on at defendant's shop and would thus negative the defence of accident.

Channell & Sutton J. J.

HALE v. KERR, 125 L. T. 284.

Part IV.

RECENT UNREPORTED BOMBAY CASES.

Surat.

HIRAKORE v. TRIKAMDAS

(S. A. 661 of 1906).

Partition Act—(1893)—S. 2. scope of.

Appeal against the decree of Mr. Dayaram Gidumal C. S.

S. 2 of the Partition Act applies as well where a court has to pass a decree in a suit for partition as where, after the court has passed a decree directing the partition to be effected in a particular mode it is found that the mode is impracticable or inexpedient and one of the parties asks the court to modify the decree by passing an order under this section. In partition suits the right of each party to obtain a share by partition declared by the court is the primary thing and the mode in which that share is to be carved out is subsidiary. If partition Act applies the proceeding taken under S. 396 C. P. Code does not bar the application (Chandavarkar & Knight J. J.),

Mr. L. A. Shah for the Appellant.

Mr. Manubhai Nanabhai for the Respondent.

Decree confirmed.

Poona.

(G. S. DANDAVATE IN RE)

(C. A. 540 of 1907).

Privy council—appeal to—Pleader dealt with under disciplinary Jurisdiction.

Petition of Mr. G.S. Pleader for special leave to appeal to Privy Council, Held (Knight & Macleod J. J.) that no appeal lies by right of grant against order of High Court under cl. 10 of Letters Patent as it is in the nature of a final judgment, High Court has no power to grant special leave.

Appellant in person.

Government Pleader for opponent.

Rule discharged.

Ahmednagar.

SHRIRAM v. SECRETARY OF STATE.

(F. A. 30 of 1906).

Practice—Jurisdiction—defect of—found in appeal—return of plaint.

Appeal against the decree of Mr. C. Fawcett I. C. S District Judge.

Plaintiff sued in the District court at Nagar to set aside the order of the Revenue Commissioner made in 1893 directing that the name of defen-

dant 2 be entered in the revenue register as the person entitled to receive a certain share in a cash allowance payable to Devasthan; the District Judge dismissed the suit against the Secretary of State; plaintiff appealed to the High Court and abandoned the claim against the Secretary of state: The High Court sent the case back to be proceeded with in the F. C. Sub-Judge's Court following the practice ruled in *Fatma v. Darga Saheb* (Bom. P. J. 57 of 1875) (*Chandavarkar & Knight J. J.*)

Mr. G. R. Rao and Mr. N. V. Gokhale for Appellant.

Government Pleader for Respondent. No. 1.

Mr. G. B. Rele and Mr. C. A. Rele for Respondent. No. 2.

Belgaum.

IMAM HUSEN v. RACHAPA.

(S. A. 401 of 1904).

Limitation—Art 142—Ejection suits.

Appeal against the decree of Mr. W. Alcock I. C. S.

Held (*Chandavarkar & Knight J. J.*) that in all cases of ejection prima facie Art 142 applies unless there are circumstances which bring the suit under another article. (25-11-07).

Mr. S. V. Bhandarkar for Appellants.

Mr. Nilkanth Atmaram for Respondents.

Issue sent down.

Poona.

RADHA KRISHNA v. MALBAR.

(F. A. 36. of 1906).

Practice—Additional evidence—Appeal.

Appeal against the decree of Mr. Thakur F. C. Sub-Judge.

The High Court allowed additional evidence in a suit for partition brought by minors against minors where the defendants case was managed by a Muktyar who died pending suit and the guardian was an old widow who was not expected to know much of the suit (*Chandavarkar & Balchelor J.J.*)

Mr. Branson with N. M. Samarth for the Appellant.

Hon'ble Mr. D. A. Khare for Respondent.

Case Remanded.

Poona.

PURSHOTAM v. BALWANT.

(C. Ref. 2 of 1907).

Practice—Collector desiring to intervene—Procedure.

Held (*Jenkins C. J. & Heaton J.*) that if in a judicial proceeding before a civil court the Collector thinks it necessary to bring to the notice of the judge an objection to attachment he should do it in ordinary manner by application and not by address sing letters. (15-11-07).

RECENT UNREPORTED BOMBAY CASES.

Poona.

PUNAMCHAND V. CHUNILAL.

(S. A. 625 of 1906).

Practice—*Joint Hindu family—Co-parceners to be joined as parties.*

Second appeal by the original defendant against the decrees of Mr. Kinkaid, I.C.S., District Judge.

In the case of a partnership consisting of a father and his sons in a joint Hindu family, a suit relating to such family can be brought under Hindu Law by the father alone or the son alone, representing the family. According to *Vignaneswara*, a father can sue for the son and *vice versa*. The decisions of the Bombay H. C. insist upon all the co-parceners being brought on the record as a matter of practice merely as a precautionary measure intended to safeguard the rights of the adverse party in such suits, but the omission of all the co-parceners from the suit or their addition after the suit has been brought (after limitation against them has expired,) cannot affect the merits of the suit (*Chandavarkar & Clarke J. J.*)

Mr. Chamier with Mr. M. B. Chaubal for the appellant

Mr. Binning with Mr. S. V. Bhandarkar for the respondent.

Decree confirmed.

Surat.

RAGHAVJI V. MAHANT BHAKTIDAS

(S. A. 193 of 1902.)

Injunction.—*Delay—Trespass—Practice as to.*

Second appeal by the original defendant against the decree of Mr. Dayaram, C. S. District Judge.

Mere delay is not sufficient to deprive a person of his property unless there has been conduct on his part amounting to acquiescence; abandonment or waiver (*Pir Muhomed*, 29 Bom. 245; *Kazi*, 9 Bom. L. R. 1147 followed) The principle is that rapidity of action is of greatest importance in cases of injunction; but when the trespasser builds on another's property behind the back of the latter, and the latter comes to know of the trespass and injury after the building has been erected and mischief done, the principle ceases to apply unless there are circumstances to render its application necessary.

Mr. G. K. Rao for the appellant.

Hon. Mr. Goculdas K. Parekh for the respondent.

Decrees confirmed.

Nagar.

MARUTI v. TRIMBAK.

(S. A. 343 of 1907).

Hindu Law—*Alienation by widow—Purchaser entitled to possession during her lifetime.*

Second appeal by original plaintiff against the decree of Mr. C. Fawcett, I. C. S.

Held, that in case of alienation by a Hindu widow even without a legal necessity, the purchaser from the widow is entitled to possession during the widow's lifetime. (Chandavarkar & Knight J. J.)

Mr. M. R. Bodas for the appellant.

Mr. Trikamlal R. Desai for the respondent.

Decree modified.

Nasik.

NARAYAN v. TRIMBAK.

(F. A. 100 of 1907).

Appeal by original judgment-debtor against the order of Mr. C. Kavenswar, F. C. Sub Judge.

Held (Jenkins C. J. & Batchelor J.) that it is not correct to say that the judgment-debtor is never entitled to an account: there are circumstances under which it can only be by an account that his rights can be ascertained.

Mr. R. R. Desai for the appellant.

Mr. P. P. Khare for the respondent.

Nasik.

MR. ABAS ALI v. MARYAMBIBI.

(S. A. 37 of 1907).

C. P. Code, Sec. 13-43—*Causes of action—Whether distinct.*

Second appeal by the original defendant against the decree of Mr. Kennedy, I. C. S. District Judge.

Previous suit was one for partition of certain property in which the plaintiff and defendants 1-4 were co-owners. The present suit was for money tortiously received by defendants 1-3 from the plaintiff's share in properties, the subject matter of the first suit; on its being urged that the second suit was barred by the first. *Held*, that causes of action were distinct and that the contention must be disallowed. (Chandavarkar & Knight J. J.)

Mr. R. R. Desai for the appellant.

Mr. S. S. Patkar for the respondent

Decree confirmed.

Broach.

BADRELAL v. NEW MOFUSSIL CO. LD.

(S. A. 244 of 1907.)

Pleadings—*Title based on estoppel.*

Second appeal by the plaintiff against the decree of Mr. Madgaonkar, I. C. S. District Judge.

Held (Chandavarkar & Knight J. J.) that a title founded upon estoppel being a substantial title must form the subject of a positive plea; and the High Court in second appeal will not allow it to be urged if it is not urged in the Lower Court. (*Kishori Mohan*, 18 Cal. 197, distinguished).

The Government Pleader and Mr. M. N. Mehta for the appellant.

Mr. Branson with Mr. N. M. Samarth for the respondent.

Decree confirmed.

RECENT UNREPORTED BOMBAY CASES.

(Appeal No. 24 of 1907 from order).

S. M. RY. CO. v. ANUPCHAND.

Railway's Act s. 72 (2)—*Does not affect rule of principal and agent.*

Defendants Appeal.

Held (*Chandaverkar & Heaton J. J.*) that S. 72 (2) (a) of the Railways Act does not break in upon the rule of law relating to principal and agent; viz. where a person deals with another as the agent of a third party the agent's acts bind the principal provided these acts were within the scope of the Agents Authority.

The Hon'ble the Advocate General with Crawford & Co. for the appellant.
Mr. Inverarity with Mr. K. N. Koyaji for the Respondent.

Decree confirmed.

SHEIKH MAHOMED v. JAMALUDIN.

Ratnagiri.
(S. A. 602 of 1906).

Limitation Act s. 19.—*Acknowledgment—essentials of.*

It is immaterial for the purposes of s. 19 of the Limitation Act in what connection or for what purpose the description of mortgage (Alleged to amount to an acknowledgment) was made by the mortgagor and admitted as correct by the mortgagee whether it was made in a document which had nothing to do either directly or indirectly with the mortgage. The question is whether the writing whatever be its purpose, or occasion, contains an acknowledgment of the liability in dispute (*Chandaverkar & Knight J. J.*).

The Hon'ble the Advocate General with Mr. K. N. Koyaji for the Appellant.

Mr. Branson with Mr. M. B. Chaubal for the Respondent.

Issues sent down.

ABDULLA v. KHANUMJI.

Thana.
(S. A. 509 of 1907).

Res Judicata.—*C. P. Code S. 13, 43—omission to set up a ground of defence in previous suit—previous suit decided on preliminary ground*

—no *res judicata*.

Plaintiff's appeal.

Held (*Chandavarkar v. Knight J. J.*) that the omission to set up a ground of defence in a previous suit which is not decided on that ground is no *res-judicata* if it went off on another ground not calling for decision on the particular point (not set up).

Mr. B. V. Vidvans for the Appellant.

Mr. J. R. Gharpure for the Respondent.

Decree reversed.

Khandesh.

VINAYAK v. NARAYAN.

(F. A. 90 of 1906.)

Practice—Order once made—*Res Judicata*—effect of subsequent rule of law—remedy—review.

Plaintiffs Appeal.

Held (*Chandavarkar & Heaton J. J.*) that once an order is passed, it is *Res Judicata* between the parties and no rule of law subsequently made can affect it. It cannot be upset except on review.

Mr. Branson with the Hon. Mr. D. A. Khare for the Appellant.

Mr. G. K. Dandekar for Respondent.

The Government Pleader for Respondent 2 and 3.

Decree confirmed.

Ahmedabad.

BAI DIWALI v. PATEL GIRDHAR.

(S. A. 685 of 1907)

Deccan Agriculturists Relief Act, s. 20. Instalments once refused subsequent application—*Res Judicata*.

Defendants Appeal.

Defendant in the suit had asked for instalments and that was refused she subsequently applied to the court in execution that the decree be made payable by instalments; The Lower Court refused on the ground of *Res Judicata*. Held (*Jenkins C. J. & Batchelor J.*) that there could be no bar on the ground of *Res Judicata*.

Mr. Trikamlal R. Desai for the Appellant.

Mr. Lalubhai A. Shah for the Respondent.

Decree Reversed.

DIGEST OF RECENT ENGLISH CASES.

Company.—*Debenture holders—receiver*—Debenture holders can bring an action to enforce their security and get a receiver appointed although the principal is not yet due and interest is not in arrear but only if they can satisfy the court that their security is in jeopardy. *Warrington J.*

TUFFNAL v. CHARLSTON PARK 43 L. J. 259.

Defamation.—*Libel, fair comment.*—Comment can be fair even if it imputes blame to the person criticised or tends to prejudice him. Even a personal attack may form part of a fair comment upon facts truly stated and if it is warranted by those facts.

Cozens Hardy M. R. Moulton & Buckley J. J.

HUNT v. STAR NEWSPAPER CO. 52. S. J. 376. 124. L. T. 502

43. L. J. 163.

Easement of Light.—*C. was owner and tenant of an inn built some 80 years ago.* The ground floor front was principally glass. In 1897, C. altered the front and the new front materially lessened the light to the business rooms on the ground floor front. In 1904 the owner of premises on the opposite side of the street rebuilt, and his new buildings were twice the height of the old ones.

Held that C was entitled to an inquiry whether defendant's new building was an actionable nuisance to C's light as it existed in 1897, before C made his alterations. *House of Lords.*

COWPER v. MILBURN 52 S. J. 316. 30 L. S. J. 67.

Marine Insurance.—*General average.*—A steamer loaded with cases of glass from A to B got into difficulties on starting and an hour afterwards seriously injured her stern post and rudder by striking the wall of the berth where she had loaded. The cargo was unloaded for the ship to be repaired and the glass was sent on by another steamer but was damaged by the unloading and reshipment. It is the practice of average adjusters to treat such damage to cargo as a general average loss and the cargo owners claimed contribution from the steamer's owners. Held that the

cargo had never been in peril and the unloading and reshipping was not a general average act to save the whole venture from a common peril and no contribution could be claimed. *Alverstone L. C. J.*

MAMEL v. P. & O. STEAM N. Co. 1908. W. N. 110.

Name—*nom de plume*—*right to use*.—If a person invents a nom de plume by which his contributions to a newspaper are signed and known and then he ceases to contribute to that paper, he has yet a right exclusively, to use, print and publish the name for it is his stock in trade as a writer and journalist. *Eve J.*

LANDA v. GREENBERG. 52. S. J. 354, 124 L. J. 477.

Practice—*issuing commission to take evidence*.—A court ought not to appoint a shorthand writer as commissioner to take the evidence of witnesses: the commissioner should be a person skilled in law and competent to guide and direct examination.

Cozens Herdy M. R. Buckley & Kennedy L. J. J.

BICKNELL, 124 L. J. 592.

Tort—*act done under statutory power*—*liability*—*no negligence*.—If a tramway company is under a statutory obligation to have certain roads on which its tramway is laid, with wood paving and the company paves with wood blocks coated with creasote, and the fumes given off by the creasote injure plants and shrubs belonging to a market gardener whose premises are near, the latter can recover damages from the company on the principle of *Fletcher v. Rylands*, though the company did not know that the use of creosoted wood might cause damage and were not guilty of any negligence. *(O. A.)*

WEST v. BRISTOL TRAM Co. 52 S. J. 393; 124 L. T. 524.

Will—*signature*—*proof of*.—If a will is prepared and sent to a testator with his name pencilled where he ought to sign and testator can neither read nor write and the testator acknowledges that pencil signature in the presence of two witnesses who duly attest in pencil, the will is not good in law for the signature is neither written by himself nor written by any one in his presence and by his direction. *Barnes P.*

REEVES v. GRAINGER 52 S. J. 355.

Part IV.

UNREPORTED BOMBAY CASES

Thana.

(F. A. 131 of 1907).

LANDIA GAWES (PETITIONER) vs. ANIE PEREIRA (OPPONENT).

Will—Probate—practice.

Appeal against the order of Mr. C. Dutt I. C. S.

In probate cases if there is evidence which the court is prepared to accept as to the signature of the will and its due execution according to law together with sufficient evidence that the contents of the will were known to the testator it is quite useless to consider circumstantial evidence indicating the probability that the deceased did not execute the will.

Mr. G. S. Rao, for the Appellant.

Mr. Manubhai N. for the Respondent.

Order reversed.

Ahmedabad.

(F. A. 78 of 1908).

BAI MAHALUXMI (ORIGINAL OPPONENT) vs. SOMESHWAR (APPLICANT).

Appeal—interlocutory orders in probate proceedings.

Appeal against the interlocutory order of Mr. S. Padamji.

Held (Scott C. J. and Heaton J.) that orders passed in interlocutory proceedings relating to the probate proceedings are appealable: Madavrao 2 Bom. L. R. 798 followed; 21 Cal. 539. 27 Cal. 5 dissented from.

Mr. Trikamlal R. Desai for the Appellant.

Mr. L. A. Shah for the Respondent.

Order varied.

Nagar.

(S. A. 783 of 1907).

JIVRAJ (PLF.) v. PATILBOAN (DEFT).

Appeal—order under s. 244—decree a nullity.

Second appeal against the decree of Mr. M. Kathnate F. C. Sub-Judge.

An appeal lies from an order under s. 244 even if an application for execution is rejected on the ground of the decree being a nullity. (Scott C. J. & Heaton J.)

Mr. Gadgil with Mr. C. A. Rele for the Appellant.

Mr. D. R. Patwardhan for the Respondent.

Order confirmed.

Satara.

(F. A. 163 of 1906).

LAXMI (ORIGINAL APPOXENT) v. ABA (PETITIONER).

Jurisdiction—Assistant Judge—Probate proceedings—Civil Courts Act s. 16, Act 1 of 1900. s. 2.

Appeal against the order of S. Murphy I. C. S. Assistant Judge.

In case of probate proceedings decided by an Assistant Judge, if the value of the property concerned is below Rs. 5000, appeal lies to the District Judge. Appeal must in such cases be returned by the H. C. for presentation to the proper Court, (Scott C. J. & Heaton J.)

Mr. K. H. Kelkar for the Appellant.

Mr. K. N. Koyaji for the Respondent.

Belgaum.

(F. A. 125 of 1907).

SHIVBASAN BIBI (PLF.) SABIN BIBI (DEFT).

Practice—Summons taken out—not served—no adjournment granted—remand.

Appeal against the decree of Mr. M. Nadkarni. F. C. Sub-Judge.

Summonses were issued for the attendance of some witnesses but were not served; this was not due to any negligence of the plaintiff. The Lower Court refused to grant adjournment to call the witnesses. The High Court (Scott C. J. & Heaton J.) remanded the case for the evidence of those witnesses.

Mr. Robertson with Mr. C. A. Rele for the Appellant.

Mr. K. H. Kelkar for the Respondent.

Case remanded.

Ratnagiri.

(S. A. 724 of 1907.)

BABU (PLF. 3) vs. DHONDU (DEFT).

Appeal—order dismissing appeal—pleader refused adjournment.

Second appeal against the decree of Mr. P. Talyarkhan Assistant Judge.

Appellant's pleader was present in court on the date fixed for hearing the appeal. He was not prepared to conduct the appeal, Pleader asked for an adjournment which was refused and the Judge dismissed the appeal for default; on appeal to High Court. *Held* (Batchelor & Choubal J. J.) that the order was appealable; 16 Bom. 23, 30 Cal. 660 followed.

The question in such cases is whether the pleader was called upon to conduct the appeal. Chiranjmial 20 All. 694 distinguished.

The Hon. Mr. D. A. Khare for the Appellant.

Mr. K. N. Koyaji for the Respondent.

Decree confirmed.

Part IV.

UNREPORTED BOMBAY CASES.

Nasik,
(S. A. 30 of 1907).

GOVIND (DEFT) vs. YEJUJI (PLF.)

Evidence Act s. 92—oral evidence—out and out sale—fraud.

Appeal by original defendant against the decree of Mr. B. Kennedy.
I. C. S. D't. Judge.

Held (Chandavarkar & Heaton J. J.) that where a document is given appearance of an out and out sale but it is found that it is for the purpose of secreting the property and defrauding the creditors, it is open to the Court to go into extrinsic evidence to find out what the facts were and what the real character of the transaction was intended to be.

Mr. Vaman B. Pradhan for the Appellant.

Mr. Ratonji R. Desai for the Respondent.

Decree Reversed.

Ahmedabad.

(C. Rev. App. 153 of 1903.)

SANKALCHAND (DEF.) v. ABDUL REHMAN (PLF.)

T. P. Act S 107—Lease—Registration—agreement to lease unregistered—suit for damages for breach.

Application to revise the decree of L. P. Parikh Esq. Small C. C. Judge.

Defendant agreed to give a lease of his shop to plaintiff on a future day; the agreement was not registered. Defendant could not give the plaintiff possession on the due date and so the plaintiff sued defendant for damages for the breach of the agreement. Held (Scott C. J. & Chandavarkar J.) that the agreement not being registered, there was no lease and so there could be no breach.

Mr. Trikamlal R. Desai for the Appellant.

Mr. G. B. Rele for the Apponent.

Rule Absolute.

Satara.

(C. Rev. App. 54 of 1908.)

GOVIND (PLF.) v. APA. (DEFT.)

O. P. Code S. 622—revision—no distinct finding on issue.

Held (Scott C. J. & Batchelor J.) that the mere fact that the Lower Court has not recorded explicit findings upon certain issues, findings on which are implied in his judgment does not bring the case within S. 622 C. P. Code.

Mr. S. R. Gokhale for the Appellant.

Mr. K. H. Kelkar for the Apponent.

Rule Discharged.

Nasik.
(S. A. 309 of 1907.)

VENU (PLF). v. TUNGA. (DEFT).

Notice—Equitable right—Well established principles.

Held (Scott C. J. & Batehlor J) that in an ordinary case of an equitable right depending upon a well established principle of Court and not upon a doubtful question of construction, a purchaser is bound by notice of that right as much as if it were notice of a fact.

Mr. S V. Bhandaskar for the appellants.

Hon'ble Mr. D. A. Khare for the Respondents.

Ahmedabad.
Appeal No. 11 of 1908 from order.

GOKALDAS (PLF). vs. BALABHAI.

*C. P. Code, sec. 582—Powers of Commissioner—C. P. Code, sec. 397
398—Remand—Genuineness of books.*

Appeal by original plaintiff against the order of remand by M. Majumdar Jt. F. C. Sub-Judge A. P.

Held that, A Sub-Judge can leave to the Commissioner appointed under ss. 397, 398 to go into the question whether the accounts books are genuine or not. When it leaves to the Commissioner to investigate accounts, the Court has the power to delegate to him the power to do all that is incidental thereto.

(Chandavarkar & Heaton J. J.)

Hon. Mr. G. K. Parekh for the Appellant.

Mr. Trikam Lal R. Desai for the Respondent.

Order reversed.

Ratnagiri.
(Appeal from Order 12 of 1908).

SADASHIV (PLF) v. NANA (DEFT).

Appeal—Jurisdiction—Mortgage—Suit.

Held (Chandavarkar & Heaton J. J) that the real test of jurisdiction for purposes of appeal is the principal sum secured by the mortgage that is the subject-matter of the suit.

Hon. Mr. D. A. Khare for the Respondent.

Mr. N. V. Gokhale for the Respondent.

Order reversed.

Surat.
(S. A. 114 of 1906)

CHAGAN (PLF. 2) v. MULCHAND, (DEFT).

Practice—Amendment—Costs.

When an appellate court allows amendment of a plaint to the plaintiff and remands the suit, the general practice is to call upon the plaintiff to pay the costs up to the amendment. (Chandavarkar & Heaton J. J.)

Mr. Manubhai N. for appellant.

Mr. Wadia with Mr. K. C. Koyaji for respondent.

Case remanded.

ACT OF SUPREME COUNCILS.

LEGISLATIVE DEPARTMENT.

ACT No. I OF 1908.

Received the assent of the Governor General on the 3rd January 1908.

An Act further to amend the Legal Practitioners Act, 1879.

Whereas it is expedient further to amend the Legal Practitioners Act XVIII of 1879; it is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Legal Practitioners (Amendment) Act, 1908.

2. *Amendment of section 4 of Act XVIII of 1879.*—In section 4 of the Legal Practitioners Act XVIII of 1879, the following amendments shall be made namely :—

(a) after the words “this act” the words “or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act” shall be inserted; and

(b) after the words “no such Vakil” the words “or Pleader” shall be added.

3. *Addition to section 7 of Act XVIII of 1879.*—To section 7 of the said Act the following shall be added namely :—

“ Provided that, on the admission as a Pleader of any person who has been previously entered as a Vakil or Attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practise permanently in the courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.”

4. *Amendment of section 25 of Act XVIII of 1879.*—To section 25 of the said Act the following should be added namely :—

“ Provided also that no stamped paper shall be required in the case of a certificate whether original or renewed authorising, under section 7, a Vakil or Attorney on the roll of a High Court established by Royal Charter to practice as a Pleader.”

5. *Amendment of section 38 of Act XVIII of 1879.*—In section 38 of the said Act, “7,” shall be added after “5,” and “25,” after “16.”

ACT No. II OF 1908.

Received the assent of the Governor General on the 3rd January 1908.

An Act further to amend the Indian Tariff Act, 1894.

Whereas it is expedient further to amend the Indian Tariff Act VIII of

1894; it is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Indian Tariff (Amendment) Act, 1908.

2. *Amendment of Schedule III of Act VIII of 1894.*—In No. 2 of Schedule III of the Indian Tariff Act, 1894, as amended by the Indian Tariff Act (1894) Amendment Act, 1896, “annas 2” shall be substituted for “anna 1” in the fourth column as the rate of duty to be levied and collected per Imperial gallon or six quart bottles of ale, beer, porter, cider and other fermented liquors.

Statement of Objects and Reasons.

The present rate of duty on beer and other fermented liquors, whether imported or manufactured in the country, is one anna per gallon. The tariff rate has remained unaltered since 1863, and the excise duty since 1890, when it was first imposed. The rate of taxation is relatively inadequate, in view of the greatly enhanced taxation to which spirit, both country and imported, has in recent years been subjected. Moreover, as shown by the declared value of imports, a large quantity of beer which comes into India from abroad pays less, at one anna a gallon, in proportion to its value than it would do under the ordinary tariff rate of 5 per cent. *ad valorem*. Recently the Indian Excise Committee have recommended that the duty on beer and other fermented liquors should be raised from one anna to two annas per gallon, and the object of this Bill is to give effect to that recommendation.

ACT NO. III OF 1908.

Received the assent of the Governor General on the 17th January 1908.

*An Act further to amend the law relating to Private
Trusts and Trustees.*

Whereas it is expedient further to amend the law relating to Private Trusts and Trustees; it is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Indian Trusts (Amendment) Act, 1908.

2. *Amendment of section 20, Act II of 1882.*—For clause (d) of section 20 of the Indian Trusts Act, 1882, the following clause shall be substituted, namely:

“(d) in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust, or city improvement trust, in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi.”

ACT OF SUPREME COUNCILS.

ACT No. IV of 1908.

An Act further to amend the Coroners Act, 1871, and the Prisoners Act, 1900.

Received the assent of the Governor General on the 14th February 1908.

WHEREAS it is expedient further to amend the Coroners Act, IV of 1871 and the Prisoners Act, III of 1900; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Coroners (Amendment) 1908.
2. *Amendment of section 9 Act IV of 1871.*—In section 9 of the said Act, for the word “buried” the words “disposed of” shall be substituted.
3. *Amendment of section 11, Act IV of 1871.*—In section 11 of the said Act, for the words “where the first was insufficient” the words “where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition” shall be substituted.
4. *Addition of proviso to section 15, Act IV of 1871.*—To section 15 of the said Act the following shall be added, namely:—

“Provided that the Coroner may, with the concurrence of a majority of the jury, dispencc with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing.”
5. *Amendment of section 17, Act IV of 1871.*—In section 17 of the said Act, for the words and figures “Act No. XV of 1869 (to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them),” the words and figures “Part IX of the Prisoners Act 1900,” shall be substituted.

6. *Addition of new section 18 A to Act IV of 1871.*—After section 18 of the said Act, the following shall be inserted, namely:—

18 A. *Report of Chemical Examiner.*—Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and

in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, V of 1898."

7. *Addition to section 21 Act IV of 1871*—To section 21 of the said Act the following shall be added, namely:—

"And the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31."

8. *Substitution of new section 25, Act IV of 1871*—For section 25 of the said Act the following shall be substituted, namely:—

"25 *Procedure where death is found due to an act amounting to an offence*.—When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police."

9. *Substitution of new section 26 Act IV of 1871*—For section 26 of the said Act the following shall be substituted, namely:—

"26. *Power to arrest and commit for trial*—The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial."

10. *Repeal of section 27, Act IV of 1871*—Section 27 of the said Act is hereby repealed.

11. *Amendment of section 28, Act IV of 1871*—In section 28 of the said Act for the word "burial" the word "disposal" shall be substituted.

12. *Amendment of Second Schedule, Act IV of 1871*—In the Second Schedule of the said Act, for the words "on view of the body of A. B. then and there lying dead" the words "in the case of A. B. deceased" shall be substituted.

13. *Amendment of Act III of 1900, section 11*—In section 11 of the Prisoners Act, III of 1900, for the words "Justice of the Peace or Coroner" the words "or Justice of the Peace" shall be substituted.

ACTS OF THE SUPREME COUNCIL

ACT No. VI of 1908.

Received the assent of the Governor General on the 8th June 1908

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances; It is hereby enacted as follows:—

1. (1) *Short title, extent and application.* This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India.

(b) all other British subjects within the territories of any native prince or chief in India.

2. *Definition of "explosive substance."* In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

3. *Punishment for causing explosion likely to endanger life or property.* Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. *Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.* Any person who unlawfully and maliciously—

[a] does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property; or

[b] makes or has in his possession or under his control any explosive

substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other persons by means thereof to endanger life or cause serious injury to property in British India ;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. *Punishment for making or possessing explosives under suspicious circumstances.*—Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to 14 years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

6. *Punishment of abettors.*—Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is a accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence

7. *Restriction on trial of offences.*—No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government or the Government General in Council.

STATEMENT OF OBJECTS AND REASONS.

Recent events have brought prominently to notice the inadequacy of the existing law to deal with crimes committed by means of explosive substances. The Indian Explosives Act, 1884 was framed to prevent accidents rather than to prevent crime and its provisions are clearly inadequate to meet the present emergency. No sentence of imprisonment can be imposed under that Act and the maximum penalty is only a fine of three thousand rupees. The Indian Arms Act, 1878, though it applies to the possession of explosives as well as arms, is also inadequate in respect both of the penalties it allows and the scope of its provisions for dealing promptly with preparations to manufacture bombs and other explosives. The Penal Code provides for the punishment of persons who

cause hurt or mischief but only when any act towards the commission of the offence is actually done. But it does not provide any penalty for making or possessing explosive subjects with unlawful intent and it does in other cases always provide such severe penalties as are required. The Governor General in Council therefore considers it necessary to supplement the existing law by an Act on the lines of the English Explosive Substances Act, 1883, which was enacted for the express purpose of dealing with anarchist crimes. The Bill which has been drafted to give effect to this decision provides for the punishment of any person who causes an explosion, likely to endanger life or property, or who attempts to cause such an explosion or makes or has in his possession any explosive substance with intent to endanger life or property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substance the onus of proving that the making or possession was lawful. It also provides adequately for the punishment both of principals and accessories

ACT No. VII of 1908.

Received the assent of the Governor General on the 8th June 1908.

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows:—

1. (1) *Short title, and extent.* This Act may be called the Newspapers (Incitements to offences) Act, 1908.

(2) It extends to the whole of British India.

2. (1) *Definitions.* In this Act, unless there is anything repugnant in the subject or context,—

(a) "Magistrate" means a District Magistrate or Chief Presidency Magistrate:

(b) "Newspaper" means any periodical work containing public news or comments on public news:

(c) "Printing press" includes all engines, machinery, types, lithographic stones, implement, utensils and other plant or materials used for the purpose of printing.

(2) Save as hereina otherwise provided, all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of Criminal Procedure, 1898.

3. (1) *Power to forfeit printing presses in certain cases.* In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

4. (1) *Power to Seize.* The Magistrate may by warrant empower

any Police officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub section (3) or to seize and carry away any property ordered to be forfeited under section 3, sub section (5), wherever found and to enter upon and search for such property in any premises—

- (a) where the newspaper specified in such warrant is printed or published; or
- (b) where any such property may be or may be reasonably suspected to be, or
- (c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search warrants by the Code of Criminal Procedure, 1898.

5. *Appeal.* Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

6. *Bar of other proceedings.* Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

7. *Power to annul declaration under Press and Registration of Books Act, 1867.* Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

8. *Penalty.* Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

9. *Application of Code of Criminal Procedure.* All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

10. *Operation of other laws not barred.* No proceedings taken

under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

STATEMENT OF OBJECTS AND REASONS.

The circumstances of the recent outrages by means of explosive substances have disclosed a close connexion between the perpetrators of such outrages and certain newspapers which have from time to time published criminal incitements. Experience has shown that prosecution under the existing law is inadequate to prevent the publication of these incitements. In the case of one newspaper, persons registered as printer and publisher have been within a comparatively short period prosecuted and convicted several times, while the real authors of the incitements have concealed their identity. This newspaper notwithstanding these prosecutions continues to exist and to pursue its criminal course. Nor is it a solitary instance of the kind.

It has therefore become necessary to make better provision for the prevention of such incitements in newspapers. The scope of the present Bill is confined to incitements to murder, to offences under the Explosive Substances Act, 1908, and to acts of violence. It gives power in such cases to confiscate the printing press used in the production of the newspaper, and to stop the lawful issue of newspaper.

The procedure adopted in the Bill follows the general lines of that provided in the Code of Criminal Procedure for dealing with public nuisances, with the important addition that the final order of the Magistrate directing the forfeiture of the press is appealable to the High Court within fifteen days. It is further provided that no action can be taken against a press save on the application of a Local Government.

When an order of forfeiture has been made by the Magistrate, but only in that case, the Local Government is empowered to annul the declaration made by the printer and publisher of the newspaper under the Press and Registration of Books Act, 1867 and thereafter neither that newspaper nor any other which is the same in substance can be published without a breach of the law.

It is also provided that no proceedings taken under the Bill shall bar the prosecution of any person for any act which constitutes an offence under any other law.

ACTS OF THE SUPREME COUNCIL

LEGISLATIVE DEPARTMENT.

ACT No VIII of 1908.

Received the assent of the Governor General on the 10th July 1908.

An Act to amend the Local Authorities Loan Act, 1904.

Whereas it is expedient to amend the Local Authorities Loan Act, 8 of 1904; It is hereby enacted as follows:—

1. *Short title.* This Act may be called the Local Authorities Loan (Amendment) Act, 1908.

2. *Amendment of section 2, Act III, 1904*—In section 2 of the Local Authorities Loan Act, 1904, for the words “bills or promissory notes payable” shall be substituted; and in the proviso to the same section, after the word “bills” the words “or promissory notes” shall be inserted.

ACT 9 of 1908.

The Indian Limitation Act, 1908.

(Published Separately.)

ACT No. X of 1908.

Received the assent of the Governor General on the 11th September, 1908.

An Act to Make special provision for the payment of duty on salt in certain cases.

Whereas it is expedient to make special provisions for the payment of duty on salt in certain cases: It is hereby enacted as follows:—

1. (1) *Short title and extent*—This Act may be called the Indian Salt-Duties Act, 1908; and

(2) It extends to the whole of British India.

2. *Payment of duty in certain cases.* Where by any enactment any duty is imposed on any salt manufactured in or imported into or transported within British India, the Governor General in Council or the Local Government may, by notification in the official Gazette, make rules providing for the payment of such duty within a period not exceeding six months from the date on which payment is due, and for the furnishing of security for such payment; and salt may be manufactured, imported or transported in accordance with rules so made as if the duty payable thereon had been paid.

ACT No. XI of 1908.

Received the assent of the Governor General on the 11th September, 1908

An Act to Amend the Assam Labour and Emigration Act, 1901.

Whereas it is expedient to amend the Assam Labour and Emigration Act, 6 of 1901; It is hereby enacted as follows:—

1. *Short title.* This Act may be called the Assam Labour and Emigration (Amendment) Act, 1908.

2. *Substitution of new section for section 91, Act VI, 1901.*—For section 91 of the Assam Labour and Emigration Act, 1901, the following shall be substituted, namely:—

91. *Power to local Government to relax certain provisions of Act.*—Notwithstanding anything contained in section 90, the Local Government may, by notification in the local official Gazette, declare that—

- (a) in the case of contractors, sub-contractors and recruiters holding licenses granted under Chapter III, any of the requirements of that Chapter, or,
- (b) in the case of garden-sardars holding certificates granted under Chapter IV or holding permits granted and countersigned under section 90 any of the requirements of that Chapter or of that section, as the case may be,

may be dispensed with or relaxed on such conditions as may be prescribed in the notification."

3. *Substitution of new section for section 218, Act VI of 1901.*—For 218 of the said Act the following shall be substituted, namely:—

"218, *Application of proceeds of fines, fees and rates.* The proceeds of any fines, fees and rates under this Act which may be credited to Government shall be expended, in such manner as the Governor General in Council may direct, on paying the salaries and allowances of officers appointed under this Act and their pensionary and leave allowances, on meeting the cost of sending labourers and other persons back to their native districts, and generally on defraying the expenses of carrying out the purposes and objects of this Act and any rules made thereunder, and not otherwise."

STATEMENT OF OBJECTS AND REASONS.

In view of the proposed withdrawal from the districts of the Burma Valley and from the districts of Kamrup and Goalpara of the chief provisions of the Assam Labour and Emigration Act, 1901 (VI of 1901), relating to labour-districts, it is desired to amend the procedure prescribed by the Act for the recruitment of labourers, so as to dispense with the taking of contracts in the case of emigrants proceeding to these districts. Provision is at the same time proposed to be made for giving a trial to the system of free recruitment by garden-sardars. With these objects clause 2 of the Bill re-enacts section 98 of the Act so as to enable Local Governments by notification to dispense with or relax any of the provisions of Chapters III and IV of the Act, subject to any conditions that may be prescribed in the notification. The clause has been made general in order that the new procedure may be applied hereafter, if considered expedient, to other labour-districts besides those referred to above.

2. Clause 3 of the Bill is intended to permit of the fees and fines realized under the Act being dealt with in the provincial accounts. The amendment of section 218 which it is proposed to make will admit of the deficits of one province being met from the surplus in another province, and as the expenditure of the receipts is restricted to the purposes specified, it will enable Government to apply any surplus which may accrue after these purposes have been carried out towards the reduction of annual rate or the registration fees.

ACTS OF THE SUPREME COUNCIL.

LEGISLATIVE DEPARTMENT.

ACT No XII of 1908.

Received the assent of the Governor General on the 30th October 1908.

An Act further to amend the Indian Emigration Act, 1883,

Whereas it is expedient further to amend the Indian Emigration Act, 1883; It is hereby enacted as follows:

1. *Short title* This Act may be called the Indian Emigration (Amendment) Act, 1908.

2. *Meaning of "India" in Act XXI of 1883.* In the Indian Emigration Act, 1883, the word "India" wherever it occurs, shall bear the meaning given to it by clause (27) of section 3 of the General Clauses Act, 1897.

3. *Omission of proviso in section 6 of Act XXI of 1883.* In section 6 of the Indian Emigration Act, 1883, the proviso to clause (2) shall be omitted

4. *Insertion of new section after section 6 of Act XXI of 1883.* After section 6 of said Act the following section shall be inserted, namely:

"6A. *Determination of certain doubts.* In case of any doubt or dispute as to whether a person should be deemed—

(i) to emigrate, or

(ii) to be native of India.

within the meaning of this Act, the question within shall be determined by such person and in such manner as the General in Council may from time to time, by rules made under this Act, direct, and such determination shall be final.

5. *Amendment of section 12 (1) of Act XXI of 1883.* In section 18, sub-section (1), of the said Act:

(a) for the words "a medical Inspector" the words "one or more Medical Inspectors" shall be substituted;

(b) after the word "lawful" the words "and may apportion their respective duties" shall be inserted; and

(c) for the word "him" the word "them" shall be substituted.

6. *Addition of new clause in section 80 (1) of Act XXI of 1883.*
In section 80, sub section (1) the word "and", where it last occurs in clause (p), shall be omitted, and after the said clause the following shall be inserted, namely:

"(pp) to prescribe the person by whom any doubt or dispute referred to in section 6A shall be determined and the procedure to be followed and the proof to be required in such cases; and"

STATEMENT OF OBJECTS AND REASONS.

ATTENTION was recently drawn to a case in which certain Portuguese native subjects of Damaun were refused permission to embark from the port of Bombay under engagement to work in Lourenco Marques, to which country emigration is not lawful under section 8 (1) of the Indian Emigration Act, 1883. The refusal was based on the ground that the term "native of India" in the Act included native subjects of foreign settlements. It is considered desirable to remedy the anomalous state of the law under which subjects of a friendly Power may be subjected to vexatious restrictions under the terms of an Act designed for the protection of British Indian subjects. With this object clause 2 of the Bill defines the term "India" so as to exclude from its meaning all foreign settlements in that country. The clause will permit of the embarkation of native subjects of foreign Powers from British Indian ports under circumstances such as those in the case referred to. It will also enable them, notwithstanding anything in section 105 of the Act, to depart by land out of British India for the purpose of entering into an agreement to labour for hire in any country beyond the sea. Clauses 4 and 6 of the Bill are enacted with a view to a provision being made by rule against possible evasions of the Act by British Indians under pretence of being foreign subjects. Clause 3 is a necessary complement of clause 4.

2. It is further proposed to take this opportunity to amend section 18 of the Act so as to enable Local Governments to appoint one or more Medical Inspectors. The existing provision which permits the appointment of only one Inspector has been found defective in that it does not take into account the possibility of the Inspector being unavoidably absent at the time when medical examination of emigrants has to take. Clause 5 of the Bill effects this object.

ACT NO. XIII OF 1908.

**Received the assent of the Governor General on the
30th October 1908.**

An Act to provide for the appointment of a Financial Commissioner for the Central Provinces and further to amend the Central Provinces Land-revenue Act, 1881.

Whereas it is expedient to appoint a Financial Commissioner for the Central Provinces and further to amend the Central Provinces Land-revenue Act, 1881. It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Central Provinces Financial Commissioner's Act, 1908; and

(2) It shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, direct.

2. Appointment of Financial Commissioner.—(1) There shall be a Financial Commissioner for the Central Provinces.

(2) The Chief Commissioner, with the previous sanction of the Governor General in Council, shall appoint, and may suspend or remove, the Financial Commissioner.

3. Assignment of powers to Financial Commissioner.—The Chief Commissioner, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, assign to the Financial Commissioner, subject to such conditions and restrictions if any, as the Chief Commissioner with the like sanction may prescribe, all or any powers or functions assigned to the Local Government or to the Chief Commissioner or to the Chief Revenue authority or to the Chief Controlling Revenue-authority by any enactment for the time being in force.

4. Substitution of new sections for sections 5 and 6, Act XVIII, 1881. For sections 5 and 6 of the Central Provinces Land-revenue Act, 1881, the following shall be substituted, namely:—

“ 5. Revenue-officers. There shall be the following classes of Revenue-officers, namely:—

The Chief Commissioner,

The Financial Commissioner,

Commissioners,

Deputy Commissioners,

The Lawyer.

Assistant Commissioners,
Tahsildars,
Naib-tahsildars.

" 6. (1) *Subordination of officers.* The Chief Commissioner shall, in ~~the~~ revenue matters, be subject to the control of the Governor General in Council.

(2) The Financial Commissioner shall be subject to the control of the Chief Commissioner.

(3) All other Revenue-officers shall be subordinate to the Chief Commissioner and the Financial Commissioner; all Revenue-officers in a division shall be subordinate to the Commissioner of the division; and all Revenue officers in a district shall be subordinate to the Deputy Commissioner of the district.

(4) An officer in charge of a village-survey in a district which is not under settlement may be invested by the Chief Commissioner with the powers of a Revenue-officer of any class, and, when so invested, shall be subordinate to such officer or officers as the Chief Commissioner may direct. "

5. *Amendment of sections 17 and 25, Act XVIII 1881.* In sections 17 and 25 of the said Act, after the words " Chief Commissioner, " wherever they occur, the words " or the Financial Commissioner " shall be added.

6. *Amendment of sections 22 and 23, Act XVIII, 1881.* In sections 22, clause (c), and 23, clause (c) of the said Act, for the words " Chief Commissioner " the words " Financial Commissioner " shall be substituted.

ACT OF PROVINCIAL COUNCILS.

BOMBAY ACT NO. III OF 1907.

(Received the assent of His Excellency the Governor on the 17th October 1907, and the assent of His Excellency the Viceroy and Governor General on the 25th December 1907,)

(*First Published, after having received the assent of the Governor General, in the " Bombay Government Gazette " on the 16th January 1908.)*

An Act further to amend the Bombay Vaccination Act, 1877, the City of Bombay Municipal Act 1888, and the City of Bombay Improvement Act, 1908, and to amend the Bombay Motor-vehicles Act, 1904.

WHEREAS it is expedient that the Municipal Corporation of the City of Bombay should be relieved of all expenses on account of the police of the City of Bombay and that in place thereof the said corporation should undertake certain medical, educational and other expenses heretofore devolving upon Government: And whereas it is therefore expedient further to amend the Bombay Vaccination Act I of 1877, the City of Bombay Municipal Act III of 1888, and the City of Bombay Improvement Act IV of 1898, and to amend the Bombay Motor-vehicles Act II of 1904, in manner hereinafter appearing; It is hereby enacted as follows:—

1. *Short title and commencement.* (1) This Act may be called the City of Bombay Police Charges Act, 1907,

(2) Sections 9, 16, 18, and 24 and so much of section 10 as relates to sections 62 and 62D of the City of Bombay Municipal Act III of 1888, as enacted by this Act, shall come into force on the first day of April 1907, and the rest of this Act shall come into force on a day to be notified in this behalf by the Governor in Council.

2. *Addition of sub-sections to section 2 of the Bombay Vaccination Act, 1877.* To section 2 of the Bombay Vaccination Act I of 1877, the following sub-sections shall be added, namely:—

“(7)” ‘The corporation’ means the municipal corporation of the City of Bombay.

(8) ‘The Commissioner’ means the Municipal Commissioner for the City of Bombay.

(9) ‘The health officer’ means the officer for the time being holding

the appointment of municipal executive health officer the provisions of the City of Bombay Municipal Act, 1888."

3. *Amendment of section 3 of the same Act.* (1) In section 3 of the Bombay Vaccination Act I of 1877, for the words "Sanitary Commissioner for the Presidency of Bombay, or Such other officer as Government directs" the words "Commissioner, with the approval of the corporation" shall be substituted.

(2) For the words "The Sanitary Commissioner or other officer aforesaid" where they occur for the first time in the said section, the words "Subject to the provisions of the City of Bombay Municipal Act, 1888, the Commissioner" shall be substituted.

(3) For the words "Sanitary Commissioner or other officer aforesaid" where they occur for the second time in the said section, the word "Commissioner" shall be substituted.

4. *Amendment of sections 4, 6, 16, 17, 19 and 29 of the same Act.* In sections 4, 6, 16, 17, 19 and 29 of the Bombay Vaccination Act I of 1877, for the expressions "Sanitary Commissioner for the Presidency of Bombay or such other officer as Government directs," "Sanitary Commissioner or other officer aforesaid" and "Sanitary Commissioner or other officer," wherever they respectively occur, the expression "Commissioner" shall be substituted.

5. *Amendment of section 5 of the same Act.* In section 5 of the Bombay Vaccination Act, I of 1877, for the words "Sanitary Commissioner or other officer aforesaid" the words "health officer" shall be substituted.

6. *Amendment of sections 6, 26 and 31 of the same Act.* (1) In section 6 of the Bombay Vaccination Act I of 1877 for the word "Government," wherever it occurs, the words "the corporation" shall be substituted.

(2) In section 26 of the same Act for the word "Government" the words "the Standing Committee appointed under the provisions of the City of Bombay Municipal Act, 1888" shall be substituted.

(3) In section 31 of the same Act for the words "The Sanitary Commissioner for the Presidency of Bombay, or such other officer as Government directs, may, with the sanction of the Governor in Council" the words "The Commissioner may with the sanction of the corporation" shall be substituted.

7. *Amendment of section 30 of the same Act.* In section 30 of the Bombay Vaccination Act I of 1877, for the words "Executive officer of health for the City of Bombay, appointed under the provisions of the City of Bombay Municipal Act, 1888, or of the officer for the time being officiating

in his appointment " the words " health officer " shall be substituted.

8. *Amendment of sections 39 and 40 of the City of Bombay Municipal Act, 1888.* (1) In section 39, sub-section (1) of the City of Bombay Municipal Act III of 1888, hereinafter called " the said Act, " the words "and of Government each, " " four members of " and " Joint " are hereby repealed.

(2) For sub-section (3) of the said section the following sub-section shall be substituted:—

"(3) The two senior members of the said committee shall retire at the end of each calendar year but shall be eligible for re-appointment, and the corporation shall from time to time appoint members to fill such vacancies and vacancies arising by the resignation or death of members. "

(3) In sub-sections (5), (9) and (10) of the said section the word "Joint" is hereby repealed.

(4) In sub-section (6) of the said section the words " provide for the Joint Schools' Committee a competent secretary and such clerks and messengers as shall be necessary. It shall also " are hereby repealed.

(5) For sub-section (7) of the said section the following sub-section shall be substituted, namely:—

"(7) The Schools' Committee shall provide out of the funds placed at its disposal by the corporation for the accommodation and maintenance of primary schools which at any time vest wholly or partly in the corporation, and for otherwise aiding primary education in accordance with the provisions of this Act and with rules made by the corporation in this behalf. "

(6) In sub-section (8) of the said section for the word " school-fund " the words " said funds " shall be substituted.

(7) In sub-section (9) of the said section

(a) for the word " school-fund " the words " municipal fund " shall be substituted;

(b) the words " and annex to the aid given to other primary schools such terms as shall seem expedient, subject always to by-laws duly made under section 461 and to rules made or approved by Government in this behalf " are hereby repealed.

(8) In section 40 of the said Act the words " in the manner described in the last preceding section or " and the word " Joint " are hereby repealed.

9. *Amendment of section 61 of the same Act.* (1) In section 61 of the said Act after clauses (f) and (g) the following clauses respectively shall be inserted, namely:—

" (ff) public vaccination in accordance with the provisions of the Bombay Vaccination Act, 1877;

(gg) establishing and maintaining public hospitals and dispensaries and carrying out other measures necessary for public medical relief. "

(2) To clause (g) the following proviso shall be added, namely:—

" Subject always to the grant of building grants by Government in accordance with the Government Grant in-aid Code for the time being in force. "

10. *Substitution of new sections for section 62 of the same Act.* For section 62 of the said Act the following sections shall be substituted namely:—

" 62. (1) The corporation shall also provide and pay to Government on the first day of every month a sum of thirty four thousand, five hundred and forty one rupees, ten annas and eight pies and in consideration of such monthly payments Government shall continue to control and maintain the institutions specified in Schedule U.

(2) Notwithstanding anything contained in clause (gg) of section 61, the corporation shall by such monthly payments be deemed to have made adequate provision for the maintenance of the said institutions and shall not be liable for any further expenditure in connection therewith.

62A. In public hospitals and dispensaries established and maintained, and in connection with other measures carried out, under clause (gg) of section 61 such fees, if any, may be charged as may be prescribed by the corporation.

62B. If at any time by or at the instance of Government primary education shall be made free, or free and compulsory, in the city, then a grant amounting to one-third of the difference between the cost thereafter annually incurred by the corporation in maintaining and aiding primary schools and the costs so incurred in the period of twelve months immediately proceeding the day on which such measure comes into effects shall be paid annually to the corporation by Government.

provided that, should there at any time be a change in the general policy of Government in regard to their liability in respect of primary education, the corporation shall be entitled to benefit by such change in policy to the same extent as other city municipalities in regard to any increase in expenditure involved in the adoption of such policy.

62C. (1) All primary schools vesting wholly or partly in the corporation and all schools wholly or partly maintained by grants payable from the municipal fund shall at all times be open to all officers appointed by Govern-

ment for the inspection of schools, and all reasonable facilities shall be given to any such officer for visiting any such school for the purpose of inspection or examination.

(2) Every recommendation made regarding any such school by any such officer shall be duly considered by the Schools' Committee and the Schools' Committee may thereupon take such action as may in their opinion be required and shall, if requested by the Director of Public Instruction for the Presidency of Bombay in any particular case, inform him of their decision and the action, if any, taken.

(3) In all matters connected with grants for the aid of primary schools other than municipal schools the Schools' Committee shall administer aid to schools complying with the necessary conditions in accordance with the provisions of the Government Grant-in-aid Code, subject to such modifications, if any, as may from time to time be made in the said Code by the corporation with the previous sanction of Government.

62D. The corporation shall provide and pay to Government on the first day of every month a sum of two thousand and eighty-three rupees, five annas and four pies, for the purposes of Prince of Wales Museum of Western India."

11. *Repeal of section 63, clause (a) of the same Act.* In section of the said Act, clause (a) is hereby repealed.

12. *Insertion of section after section 68 of the same Act.* After section 68 of the said Act the following section shall be inserted, namely:—

"68A. Any of the powers, duties and functions conferred or imposed upon or vested in the Commissioner by the Bombay Vaccination Act, 1877, may be exercised, performed or discharged, under the Commissioner's control and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe by any municipal officer whom the Commissioner generally or specially empowers in writing in this behalf; and in the said Act the word "Commissioner" shall to the extent to which any municipal officer is so empowered, be deemed to include such officer."

13. (1) *Insertion of sections after sec. 76 of the same Act.* After section 76 of the said Act the following headings and sections shall be inserted, namely:—

Officers of the Schools' Committee.

76A. (1) The corporation shall from time to time appoint a fit person to be secretary to the Schools' Committee and from time to time determine his salary.

(2) The Schools' Committee shall from time to time appoint such clerks and messengers as it may be authorized by the corporation to employ and from time to time determine their salaries.

Appointments of medical officers in connection with measures of public medical relief.

76B. The corporation shall from time to time appoint such legally qualified medical practitioners as may be necessary to the charge of any hospital maintained by the corporation in connection with measures of public medical relief carried out under clause (gg) of section 61 and determine their salaries."

(2) In section 80 of the said Act, after the figures "74," the figures and letters "76A and 76B" shall be inserted.

14. *Insertion of sections after section 89 of the same Act.* After section 89 of the said Act the following sections shall be inserted, namely:—

" 89A. On and from the commencement of the City of Bombay Police Charges Act, 1907, all the estate, right, title and interest of the corporation in and to the lands and buildings specified in Schedule V free from all liabilities and charges affecting the same and created by the corporation shall vest in His Majesty.

provided that nothing in this section shall affect any of the lands specified in the items in the said schedule numbered 28 to 139 (both inclusive) on which any moveable wooden chowki is situated at the commencement of the said Act.

89B. On and from the commencement of the City of Bombay Police Charges Act, 1907, all the estate, right, title and interest of His Majesty in and to the statue of Her Majesty Queen Victoria and the site thereof in the Esplanade Road shall vest in the corporation free from all liabilities and charges affecting the same and created by Government and the said statue and the said site shall thereafter be held by the corporation in trust as a public monument, and it shall not be lawful for the corporation, except with the previous sanction of Government, to remove the said statue from the said site or to apply the said site to any other purpose.

89C. On and from the commencement of the City of Bombay Police Charges Act, 1907, all the estate, right, title and interest of His Majesty in and to the Victoria and Albert Museum and the site thereof shall vest in the corporation free from all liabilities and charges affecting the same and created by Government and the corporation may apply the said museum and the said site to any public purpose on and from such date as the Prince of Wales Museum of Western India may be declared open by Government.

89D. On and from the commencement of the City of Bombay Police Charges Act, 1907, all the estate, right, title and interest of His Majesty in and to the Central Vaccine Depot at Parel shall vest in the corporation free from all liabilities and charges affecting the same and created by Government.

89E. On and from the commencement of the City of Bombay Police Charges Act, 1907, all the buildings used for primary education and the sites thereof within the city theretofore vesting in His Majesty shall vest in the corporation free from all liabilities and charges affecting the same and created by Government.

89F. Notwithstanding anything contained in section 89E, if any buildings or sites in respect of which before or after the commencement of the City of Bombay Police Charges Act, 1907, any grant has been made by Government for the purposes of primary education shall without the sanction of Government be used for any other purpose, the corporation shall thereupon repay to Government the amount of such grant."

15. *Addition of proviso to section 92 of the same Act.* To section 92 of the said Act the following proviso shall be added, namely:—

"provided that nothing in this section shall apply to the statue of Her Majesty Queen Victoria or to the Victoria and Albert Museum or to the sites thereof referred to in sections 89B and 89C except with the previous sanction of Government."

16. *Amendment of section 111 of the same Act.* In section 111 of the said Act—

(a) for the words "all fees," where they occur for the second time, the words "the balance, after all necessary contingent expenses have been defrayed, of all fees," shall be substituted;

(b) after the clause relating to fees for licenses granted under Bombay Act VI of 1863 the following clause shall be inserted, namely:

"the balance, after all necessary contingent expenses have been defrayed, of all fees for licenses for the playing of music in streets and public places granted under paragraph (ii) of clause (f) of section 22 of the City of Bombay Police Act, 1902."

17. *Amendment of section 118 of the same Act.* In section 118 of the said Act after the figures "62" the figures and letter "62D" shall be inserted.

18. *Repeal of section 120 of the same Act.* Section 120 of the said Act and the heading thereto are hereby repealed.

19. *Amendment of section 121 of the same Act.* In section 121 of the said Act the words "other" and "also," and in the heading to the said section the word "other," are hereby repealed.

20. *Amendment of section 461 of the same Act.* In section 461, clause (u), of the said Act,

(a) the word "joint" is hereby repealed ;

(b) the words "and of the functions assigned to it under sub-section (9) of the said section and regulating the administration by the said committee of the school-fund under sub-section (7) of the said section" are hereby repealed and after the figures "39" the word "and" shall be inserted.

21. *Amendment of section 518 of the same Act.* In section 518, sub-section (1), of the said Act, after the figures "62" the figures and letters "62C, 62D, 89F, shall be inserted.

22. *Addition of schedules to the same Act.* The schedules hereto appended shall be added to the schedules appended to the said Act.

23. *Amendment of section 40 of the City of Bombay Improvement Act, 1898.* For 'section 40, sub-section (4), of the City of Bombay Improvement Act IV of 1898, the following subsection shall be substituted, namely:—

" (4) On the expiration of the lease the building and the land forming the site thereof shall vest absolutely in His Majesty."

24. *Amendment of section 4 of the Bombay Motor-vehicles Act, 1904.* In section 4, sub-section (3), of the Bombay Motor-vehicles Act II of 1904, for the words "the total amount" the words "the balance, after all expenses incurred in administering this Act in the City of Bombay have been defrayed" shall be substituted.

ACTS OF PROVINCIAL COUNCILS.

ACT PASSED BY THE COUNCIL OF THE GOVERNOR OF BOMBAY.

Received the assent of the His Excellency the Governor on the 7th July 1908, and the assent of His Excellency the Viceroy and the Governor General on the 11th August 1908.

BOMBAY ACT NO. I of 1908.

An act to amend the Government Occupants (Sind) Act, 1890.

Where as it is expedient to amend the Government Occupants (Sind) Act, 3 of 1899, in manner hereinafter appearing; It is hereby enacted as follows.—

1. *Short title.* This Act may be called the Government Occupants (Sind) Amendment Act, 1908.

2. *Substitution of new sections for section 5 and 6.* For sections 5 and 5 of the Government Occupants (Sind) Act, 1899, hereinafter called "the said Act", the following sections shall be substituted, namely:—

"5. *Power to grant occupancies on such conditions.* When any such statement has been issued for any tract, the Collector may, in manner hereinafter provided, grant occupancies of lands in such tract on the conditions prescribed in such statement.

"6. *Mode of making such grants.* Before an occupancy of any lands is granted on such conditions to any such tract, the Collector shall prepare a sanad in duplicate describing such lands and otherwise in such form and containing such particulars as the Local Government may prescribe. One copy shall be signed by the proposed occupant in token of acceptance of the occupancy and shall be retained by the Collector, and the other copy shall thereupon be delivered to such proposed occupant:

"Provided that where the Collector, in lieu of any of the land described in any such sanad, subsequently grants the occupancy of any other lands in any such tract, he may, instead of preparing a fresh sanad in duplicate as aforesaid, endorse a note of this on the copies of the sanad already prepared, and have the endorsement on his copy signed by the occupant in token of his consent thereto.

3. Amendment of section 7. In section 7 of the said Act,

(a) for the words "entry in any such register" the words "such sanad or endorsement thereon" shall be substituted ;

(b) for the word "entry", where it occurs for the second time, the words "sanad or endorsement thereon" shall be substituted ,

(c) for the words "prescribed in the statement prefixed to such register" the words "on which the occupancy has been granted under section 5 and 6" shall be substituted.

4. Repeal of portion of section 10. In section 10 of the said Act, the concluding sentence is hereby repealed.

5. Saving of validity of past grants of occupancies. Any occupancy heretofore granted by the Collector, which expressly purports, or may be reasonably held to have been intended, to have been granted in pursuance of the said Act, shall be valid and deemed to have been granted under that Act, as amended by the foregoing sections of this Act.

STATEMENTS OF OBJECTS AND REASONS.

Owing to the frequent changes necessitated in occupancies granted in areas, to which the provisions of the Government Occupants (Sind) Act, 1899, have been applicable, the preparation and maintenance of the register prescribed by section 5 of the Act have in practice been attended with considerable difficulty. The object of this Bill is to replace the register by a sanad, as the authoritative documentary evidence of the grant and of the occupant's title, and also to validate occupancies hitherto granted in certain cases where the formal conditions of the Act regarding registration have not, owing to the difficulty mentioned, being strictly observed. As the registers will in consequence only be maintained for administrative purposes, the provisions relating to them in the Act are no longer necessary, and the Bill accordingly proposes to eliminate them.

—————:0:—————

PRIVY COUNCIL.

PRESENT: *Lord Macnaghten, Lord Davey, Sir Andrew Scoble
and Sir Arthur Wilson.*

BAJRANGI SINGH AND ANOTHER

v.

MANOKARNIKA BAKHSH SINGH.

(On appeal from the Court of the Judicial Commissioner
of Oudh.)

*Hindu Law—Succession—Custom—Hindus of Bhale Sultan
Chhatris—Exclusion of daughters and their issues—Mi-
takshara Law—Alienation by widow—Consent of reversion-
ers—Rule as to quantum of consent—Consent obtained after
execution of alienating deed.*

Among the tribe of Bhale Sultan Chhatris, it is the cus-
tom, that daughters and their issue are excluded from succes-
sion to the separated estate of their father.

Under the Mitakshara law, a widow has power to alienate
her deceased husband's estate with the consent of her hus-
band's kindred, and ordinarily the consent of the whole body
of persons constituting the immediate reversioners at the time
should be obtained, though there may be cases in which spe-
cial circumstances may render the strict enforcement of this
rule impossible. It is immaterial that the consent is obtained
after the execution of the deed.

Radha Shyam v. Joy Ram, (1890) I. L. R. 17 Cal. 896,
approved.

Rampal Rai v. Tula Kuari, (1883) I. L. R. 6 All. 116,
overruled.

Nobo Kishore Sarma Roy v. Hari Nath Sarma Roy,
(1884) I. L. R. 10 Cal. 1102; *Marudamuthu Nadan v. Sri-
nivasa Pillai*, (1897–8) I. L. R. 21 Mad. 218; and *Vinayak
v. Govind*, (1900) I. L. R. 25 Bom. 129.

Appeal from a decree of the above Court (March 6, 1900),
affirming a decree of the District Judge of Rae Bareilly (Ja-
nuary 23, 1899).

Mr. Ross for the appellant.

Mr. De Gruyther for the Respondent.

The judgment of their Lordships was delivered by

Sir Andrew Scoble.—Sitla Baksh Singh, a Hindoo of
the tribe of Bhale Sultan Chhatris, resident in Sultanpur.

P. C.

1907.

February, 8, 13
and 14, and
October, 31.

P. C.

1907.

Bajrangi Singh
v.Manokarnika
Bakhsh Singh.Sir Andrew
Scoble.

died sometime before the annexation of Oudh, leaving him surviving a widow named Daryao Kunwar, and two daughters, Janga Kunwar and Jagrani Kunwar. He was absolute owner of an estate known as Pindara Karnai and other property, which at his death passed to his widow, and at her death, would have passed to his daughters, but for a custom of the tribe excluding daughters and their issue from succession. The widow died on the 6th of August 1892, having previously sold the whole of the estate to her son-in-law Moheshar Bakhsh Singh, the husband of her daughter Jagrani Kunwar, and mutation of names in the Revenue Registers was effected in his favour. After the death of Moheshar, which occurred on the 3rd of April 1893, the name of his son, Manokarnika Baksh Singh, the present respondent, was entered in the Government Records as proprietor of the estate ; and the present appellants (with one Mahpal Singh, who died while the case was pending) brought the suit now under appeal, claiming that, by reason of the custom of the Bhale Sultan Chhatris, they were the next heirs in reversion to the estate of Sitla Bakhsh.

In the Courts below, and before their Lordships, two main questions were raised. First, whether the custom had been proved, and, secondly, whether certain deeds confirming the sales by the widow to Moheshar, executed by the then nearest reversioners, and disclaiming all title to the property in dispute, were binding on their descendants, the appellants, who were the nearest reversioners at the time when the succession opened, at the widow's death. In the Courts in India, the District Judge held the custom not proved and the deeds not binding ; the Judicial Commissioner came to the exactly opposite conclusion on both points. The conflict of opinion in the Courts in India upon the question of custom has made it necessary for their Lordships to examine carefully the evidence in this case, in order to ascertain whether the alleged custom has been satisfactorily proved. In making this examination, their Lordships have been materially assisted by the elaborate analysis of the evidence made by both the learned Judges below, and by the learned counsel who argued the appeal. They will briefly state the grounds on which they consider the judgment of the Judi-

cial Commissioner on this point must prevail.

The Bhale Sultan clan appear to have derived their name, some three centuries ago, from their warlike exploits in the service of the Emperors of Delhi. They are now settled in considerable numbers in the district of Sultanpur in Oudh, in several villages in which they constitute the bulk of the population. In the language of the Indian Evidence Act, 1872, (section 48) they form a "considerable class of person." The evidence in support of the custom was mainly oral, and no document was produced of an earlier date than the British annexation. Thirty five witnesses were examined on behalf of the appellants. They were all members of the Bhale Sultan clan, mostly men of mature age and of good position. They all gave evidence that in their clan, it was the custom that daughters and their issues were excluded from succession to the separated estate of their father, and put forward thirty-nine instances in which this exclusion had taken place. The Judicial Commissioner held that twenty of these instances had been satisfactorily proved. For the respondent, no evidence was given in contradiction of these instances, though ample time was allowed for the production of such testimony had it been available, but six witnesses were called, one of whom had signed a *wajib-ul-arz* in which the custom was set up, and two gave evidence in support of the custom.

In corroboration of the oral evidence, a number of village administration papers (*wajib-ul-arz*) were produced, of which seven admitted by both Courts to be relevant, as relating to Bhale Sultan villages. In all these, the rule is stated that a daughter and her issue do not *alal-umum* (that is, as a general rule) obtain the share. One of them is attested by 44 zemindars and Lambardars of the village, another by 49, others by 8 or 10. The dates of these documents are not given, but they were all officially recorded to prior to the institution of this suit, and quite independently of the parties thereto.

One other piece of evidence remains to be noticed. It has been stated that Sitla Bakhsh left two daughters, Janga Kunwar and Jagrani Kunwar. In 1876, Janga Kunwar filed a suit against her mother Daryao Kunwar and her brother-in-law Maheshwar Bakhsh for a declaratory decree that she was

P. C.

1907.

Bajrangi Singh
v.

Manokarnika
Bakhsh Singh.

Sir Andrew
Scoble.

P. C.

1907.

Bajrangi Singh

v.

Manokarnika
Bakhsh Singh.Sir Andrew
Scoble.

entitled to succeed to half her father's estate; and in answer to her claim the vakil for the defendants put forward the plea that "among Bhale Sultans, a daughter " never succeeded to the inheritance of her father." The Court came to no decision on the point, but disposed of the suit on another ground, reserving Janga Kunwar's right to put forward her claim on the death of her mother. The fact, however, that this defence was raised shows that the existence of the custom was present to the mind of Daryao Kunwar at the date of the transactions to which their Lordships will now proceed to refer.

Although Daryao Kunwar appears to have been willing to invoke the custom as a defence against the claim of her unmarried daughter, she was at the same time endeavouring to defeat the operation of the custom in regard to her married daughter, Jagrani Kunwar, and her husband, Maheshar Bakhsh Singh, the father of the present respondent. During the period from 21st October 1872 to 24th July 1875, she executed five deeds of sale, by which she purported to transfer, for valuable consideration, successive portions of her husband's property to Maheshar Singh. The District Judge has found that these deeds were executed without "legal necessity;" and it is certain that the preliminary consent of her husband's reversionary heirs, was not obtained. One of these heirs, Mata-din Singh, the father of the appellants Jagdamba Singh and Bajarangi Singh, brought a suit in the Court of the Deputy Commissioner of Sultanpur in 1873, to set aside three of the deeds; but on appeal, this suit was dismissed on a technical ground by the Judicial Commissioner on the 6th May 1874. Janga Kunwar's suit, already referred to, was dismissed on the 25th August 1876. Having thus succeeded, for the time being, in the Courts, Daryao Kunwar entered into negotiations which the persons who were at the time admittedly the nearest reversionary heirs to her husband's estate, and obtained from them two documents, called deeds of relinquishment, one dated the 4th May 1877 and the other, dated the 29th January 1878. The first of these was signed by five persons, four of whom died without issue in Daryao Kunwar lifetime, and the fifth, Fajial Singh, is the father of the plaintiff Mahpal Singh, who died while this suit was pending

in the Court of the District Judge, and who is now represented by the appellants. The second was signed by Janga Kunwar, Matadin Singh (the father of the present appellants), and Hanuman Singh, who is still living, but is not a party to this suit. In these documents, which are identical in terms, after enumerating the sales by Daryao Kunwar to Maheshar Singh, the executants go on to say:

" We all have given our full consent to all those sale-deeds which the Thakurain has executed in favour of the Babu, and will ever remain so satisfied. And after the death of the Thakurain we shall bring no claim against Babu, on account of the moveable and immoveable property owned by her; hence we have executed this deed of agreement so that it may serve as an authority, and be of use in time of need."

" It was not disputed," says the Judicial Commissioner in his judgment, " that the executants of these deeds received consideration for ratifying the transfers and agreeing not to dispute their validity. Indeed it was said, that they were paid to execute the deeds." Upon these facts, the Judicial Commissioner found that the transfers to Maheshar Singh were valid, and dismissed the appeal.

The restrictions imposed by the Hindu law upon the widow's power to alienate her deceased husband's estate have frequently been the subject of consideration by this Committee.

" For religious or charitable purposes, of those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last, she must show necessity. On the other hand, it may be taken as established, that an alienation by her which would not otherwise be legitimate, may become so, if made with the consent of her husband's kindred." [*Collector of Masulipatam v. Cavalry Vencatta Narrainapah*, (1861) 8 Moo. I. A. 529, at 551.]

" The kindred in such case," their Lordships observe in a later case, " must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there should be such a concurrence of the members of the family as suffices to raise a presumption, that the transaction was

P. C.

1907.

Bajarangi Singh

v.
Manokarnika
Bakhsh Singh.

Sir Andrew
Scoble.

P. C.
1907.

Bajrangi Singh

v.

Manokarnika
Baksh Singh.

Sir Andrew
Scoble.

a fair one, and one justified by Hindu law." [*Rij Lukhee Dabea v. Gookul Chunder Chowdhury*, (1869) 13 Moo. I. A. 209 at 228.]

Upon the practical application of this general principle, there has been much discussion in the High Courts in India. A Full Bench of the High Court at Allahabad, in the case of *Ramphal Rai v. Tula Kuari* (1883) I. L. R. 6 All. 116. considered that

"The plain principle deducible from these rulings of the Privy Council is that in order to validate an alienation by a Hindu widow of her deceased husband's estate for purposes other than those sanctioned by the Hindu law, it must have the consent of all those among his kindred who can reasonably be regarded as having an interest in questioning the transaction." And they accordingly held that the consent of the heir presumptive to an alienation by a widow was not sufficient to defeat the rights of a more remote reversioner and that an assignment by the widow to the heir presumptive had no greater effect in her favour than it would have had if he had been a stranger. "We think," say the learned Judges, "that the spirit of the Hindu law is to keep the right of succession to the deceased husband's estate open until the widow's death, free of any control by her except in such cases as she has a power to adopt and that no reversioner possesses such a present vested interest as enables him to combine with her in defeating his co-reversioners. In other words, her right and theirs have one common basis, that of survivorship to the widow, and it is incapable of anticipation."

The High Court of Calcutta has taken a different view, based upon a long current of authority in that Court, albeit two of the learned Judges, Garth, C. J. and Pigot, J. considered that the principles on which the decision was founded were open to great objection. In the case of *Nobokishore Sarma Roy v. Hari Nath Sarma Roy* (1884) I. L. R. 10 Calc. 1102. a Full Bench held that under the Hindu law current in Bengal:

"A transfer or conveyance by widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner will conclude another person not a party thereto, who

is the actual reversioner, upon the death of the widow, from asserting his title to the property."

The ground of the decision is thus shortly stated by Garth, C. J. :

"If it is once established as a matter of law, that a widow may relinquish her estate in favour of her husband's heir for the time being, it seems impossible to prevent any alienation which the widow and the next heir may agree to make."

And more fully by Mitter, J :

"Whatever conflict there may be upon the question whether a Hindu widow may sell the whole inheritance without any legal necessity, merely with the consent of the next male heir, there is no conflict in the decisions, since the case of *Jadamoney* was decided in the late Supreme Court of Calcutta, upon the question whether the relinquishment by a Hindu widow of her estate to the next male heir of her husband is valid or not. Such relinquishment by the widow has been held for a long series of years to be valid. But if the widow is competent to relinquish her estate to the next male heir of her husband, it follows as a logical consequence, that she can alienate it merely with his consent without any legal necessity."

In a subsequent case (*Radha Shyam v. Foy Ram Senapati* (1890) I. L. R. 17 Calc. 896. the same High Court held that the consent must be of the whole body of persons constituting the next reversion.

The Calcutta decision, of course, is not binding upon other High Courts, but it has been followed in Madras. In the case of *Marudamuthu Nadan v Srinivasa Pillai* (1898) I. L. R. 21 Mad. 128. decided by a Full Bench of the Madras High Court in 1898; Subramaina Ayyar, J. says :

"I think it necessary to go into the question whether the Hindu law, according to the texts or the commentaries, lends support to the doctrine that a female holding a qualified estate can validly surrender such an estate so as to entitle the then immediate reversioner to enter upon the inheritance and to hold it absolutely, as if the succession had opened by the nature or civil death of the qualified owner. Though there has been no course of decisions on the point in this Presidency as in Bengal, yet instances have occurred which show that parties have acted upon the view that such surrenders are valid in these parts as well,

P. O.

1907.

Bejrangi Singh.

Manokarnika
Bakhsh Singh.

Sir Andrew
Scoble.

P. C.

1907.

Bajrangi Singh

v.

Manokarnika
Bakhsh Singh;Sir Andrew
Scoble.

This appears even from some of the cases which have come before the Court. Since there is nothing in the doctrine itself which makes it less suited to the community in this Presidency than to the community in Bengal, it is not surprising that the Calcutta rulings have in practice been followed in this Presidency also. In such circumstances the rule, as stated by the Judicial Committee in *Behari Lal v. Madho Lal* (1891) L. R. 19 I. A. 30; I. L. R. 19 Calc. 236 should, I think, be taken, to be a rule applicable to this Presidency too, subject, no doubt, to the restriction pointed out by their Lordships, *viz.*, that the surrender should be absolute and complete, and that the whole limited estate should be withdrawn, a restriction that would guard against the injurious results which would follow if the rule were not so qualified."

The question was also considered by High Court of Bombay in 1901 in the case of *Vinayak v. Govind*. (1900) I. L. R. 25 Bom. 129. In the course of his judgement, Jenkins, C. J., says (at p. 133);

" There can be no question that, apart from legal necessity, a widow can validly alienate land that has devolved upon her from her husband with the consent of the reversioner. The basis on which this rests is a matter of controversy. The High Court of Calcutta on the whole appears to favour the view that the consent derives its effect from the power supposed to reside in a widow of accelerating, by the surrender of her own interest, the interests of the reversioners. It is impossible not to feel some difficulty as to this doctrine.....The other view is that the consent of the persons interested to oppose the transaction evidences its propriety, if not its actual necessity. This has a parallel in the law relating to a widow's adoption under certain circumstances, and it finds support in the texts.....This view has too, in a measure, the sanction of the Privy Council. "

And he quotes the cases in 8 Moo. I. A. and 13 Moo. I. A. which have been already referred to "Turning then to Bombay," he goes on to say, "the High Court here appears to have accepted this view rather than that which finds favour in Calcutta." In the same case Ranade, J. observes (at p. 139):

"The Bengal theory that the widow's interest was a life interest, and that her surrender or release of that interest to the next reversioner accelerates his obtaining the full title has never met with much acceptance on this side of India. Our leading case—*Varjivan Rangji v. Ghebji Gokaldas*, (1881) I. L. R., 5 Bom. 563, lays down that the consent must be of all the kindred, but that does not mean that every single member who is a kindred must actually join in the conveyance."

And the conclusion to which he comes is that, in order to validate an alienation by a widow otherwise than from legal necessity,

"The consent of the reversioners must be of such kindred the absence of whose opposition raises a presumption that the alienation was a fair and proper one."

The principle being thus admitted by the High Courts in India, the question of the *quantum* of consent necessary only remains. The High Court of Allahabad, indeed, does not recognize the validity of surrenders in favour, or alienations with the consent, of presumptive reversioners, so as to defeat the title of the actual reversioner at the time of the widow's death. But this restriction is at variance with the principle itself, and is not in accordance with the practice in other parts of India in which the Mitakshra law prevails. Their Lordships have not been referred to any cases in the Province of Oudh in which this restriction has been acted upon; and though they would be unwilling to extend the widow's power of alienation beyond its present limits, they cannot adopt the further limitation which the Allahabad High Court has sought to establish. They agree with the High Court of Calcutta *Radha Shyam v. for Ram*. (1890) I. L. R. 17 Calc. 896 that ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible.

Applying this rule to the case now under consideration, the Judicial Commissioner as found that "of the reversionary heirs who executed the deeds, Hanuman Sing and Sheo Dayal Singh were four degrees removed, and Sheo Bakhsh Singh, Sheo Narain Singh, Baijnath Singh, and Matadin Singh

P. O.

1907.

Bajrangi Singh

Manokarnika
Bakhsh Singh.Sir Andrew
Scoble.

P. C.

1907.

Bajrangi Singh
v.Manokarnika
Bakhsh Singh.Sir Andrew
Scoble.

were five degrees removed from Jai Singh, the common ancestor of themselves and Sitla Bakhsh Singh. There do not appear to have been any other reversionary heirs alive at the time of the transfers, superior in degree to Hanuman Singh and Sheo Dayal Singh, or equal in degree to Sheo Bakhsh Singh, Sheo Narain Singh, Baijnath Singh, and Matadin Singh, or indeed any other reversionary heirs at all in the time of JaiSinghRai. " Their Lordships agree with the Judicial Commissioner that the consent of these persons was sufficient, and that it is immaterial that it was given after the execution of the deeds. *Omnis ratihabitio retrotrahituret mandato priori aequiparatur.* The appellants who claim through Matadin Singh and Baijnath Singh must be held bound by the consent of their fathers.

Their Lordship will humbly advise His Majesty that the appeal ought to be dismissed and the decree of the Judicial Commissioner dated the 6th March 1900 confirmed. The appellants must pay the costs of the appeal.

Appellants' Solicitors—*Barrow, Rogers and Nevill.*

Respondent's Solicitors.—*Watkins and Lempriere.*

Appeal dismissed.

BIBI PHUL KUNWAR.

VERSUS

GHANSHYAM MISRA and ANOTHER.

P. C.

1907.

November 19.

Court Fees Act (VII of 1870), Sched. 2 Art. 17 Clause I.—Code of Civil Procedure Act XIV of 1882, section 283—
Valuation of the suit.

Where a party prefers a claim to any property in execution of a decree but fails to establish it and brings a suit to establish the right, the suit is of the nature described in section 283, of the Code of Civil Procedure. The plaint is governed by the first head of Article 17 of schedule II, of the Court Fees Act, and is chargeable with only a ten-rupee stamp.

The value of the action must mean the value put by the plaintiff, and the sum in the execution of the decree is not the criterion. There is in the statute no general or over

riding reference to value. The terms of sub-section I of article 17 contains no reference to value. In short, the statute, for good reasons or bad, has dealt with certain actions irrespective of value; and the present action is one of them.

Dhondo Sakharam Kulkarni v. Govind Babaji Kulkarni, I. L. R. 9 Bom., 20 approved.

APPEAL against the judgment of the High Court of Judicature at Fort William in Bengal.

The material facts appear from the judgment.

The judgment of their Lordships was delivered by

LORD ROBERTSON.—The sole question in this appeal is what is the proper court-fee payable on the plaint in the suit. The Act governing the question is the Court Fees Act (VII of 1870). Proceeding on the theory that what was due was Rs. 20, the appellant stamped her plaint accordingly; her suit was dismissed in the court of first instance on the ground that her plaint was insufficiently stamped; and this judgment was affirmed by the High Court of Bengal in the judgment now appealed against. The present appeal has been heard *ex parte*.

For the right determination of the question at issue it is necessary to ascertain what are the objects and the nature of the suit. Now, fortunately, this is not dubious. The plaintiff succinctly and accurately states that the cause of action accrued on 24th April 1899, that being the date of a judgment pronounced against her in the Court of the Subordinate Judge of Purneah in certain execution proceedings. What had taken her into that Court was this: she had bought a property from the second respondent and had taken possession and was registered as a proprietor. After and notwithstanding, this, the first respondent, purporting to be a creditor of the second respondent under a decree for Rs. 62,022 attached the property and advertised it for sale. The appellant lodged with the Subordinate Judge of Purneah, before whom the execution proceeding took place, a claim to the property claiming that her right should be declared and that an injunction should issue against the execution of the decree held by the first respondent. This claim was rejected by the Subordinate Judge on 24th April 1899, and his decree is the cause of action in the

P. C.

1907.

Bibi Phul

Kunwar

v.

Ghanshyam

Misra.

P. C.

1907.

Bibi Phul

Kunwar

v.

Ghanshyam.

Lord Robertson

suit which gives rise to this appeal.

Now the right of the appellant to sue for the establishment of her right, which the Subordinate Judge had negatived, rests on the 283rd section of the Civil Procedure Code (XIV of 1882).

“ The party against whom an order under ss. 280, 281, or 282 is passed may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, the order shall be conclusive.”

This is clear of itself, and the High Court, in the judgment appealed against, describes the suit as “ of the nature referred to in section 283. ”

Having thus ascertained what is the nature of the suit, their Lordships turn to the Court Fees Act to see whether such actions of appeal are specifically dealt with; for it is only if they are not specifically dealt with that the task arises of finding to which group of cases this is to be assigned. Now, the 17th article of schedule II. is expressly made to apply to “ Plaintiff or memorandum of appeal in each of the following suits. ”

“ 1. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court. ”

Now this is an exact description of the effect of the appellant's suit. It is true that, instead of asking the court to alter or set aside the decree which is the cause of action, she categorically asks from the Court the several decrees which she had asked from the Subordinate Judge, and which the Subordinate Judge had refused. But this is a merely verbal or formal difference, and section 283 of the Civil Procedure Code, under which section the action is brought, recognizes such a suit as not merely an appropriate, but the only mode of obtained review in such cases.

Their Lordships are accordingly of opinion that the first head of article 17 of Schedule II. applies to the case. This view is opposed not only to that of the respondents and of the High Court, but to that of the appellant. Misled by the form of the action directed by section 283, both parties have

treated the action as if it were not simply a form of appeal but as if it were unrelated to any decree forming the cause of an action. Accordingly, on the one hand, the appellant, pointing to her prayer for a declaration, says she pays Rs. 10 on that, and, pointing to her prayer for injunction, says she pays other Rs. 10 on that. In their Lordship's judgment, this is not the proper view of the suit taken as a whole; but, if it were, it would be extremely difficult for the appellant to bring her suit, which asks consequential relief as well as a declaratory decree, within the enactment which she invokes.

On the other hand, the respondents equally ignore the essential fact that this is a plaint for review of a summary decision; and they go on to bring the action, treated as an original action, within the class of cases where the court fees are *ad valorem* of the action. It is not necessary to discuss this in detail; but their Lordships are not satisfied that, even if the value of the action determined the fee, the respondents have rightly ascertained the value. What they have done is simply to take the sum in the execution decree. This is plainly a fallacious proceeding. The value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000, while the execution debt was Rs. 10,000. It is only of the execution debt is less than the value of the property that its amount affects the value of the suit.

Their Lordships, however, are satisfied that there is in the statute no general or overriding reference to value. The terms of sub-section 1 of article 17 (which they had to apply) contains no reference to value. In like manner the class of suits dealing with arbitration awards is coupled with suits such as that immediately in question; awards may be of value Rs. 10 or of value Rs. 100,000; and yet no distinction is made. In short, the statute, for good reasons or bad, has dealt with certain actions irrespective of value; and the present action is one of them.

This being a matter of practice, although to be determined by statute, their Lordships would willingly have given much weight to any consentaneous practice. But while the respondents can claim to be supported by decision of the

P. O

1907.

Bibi Phul
Kunwarv.
Ghanahyam

Lord Robertson.

P. C.

1907.

Bibi Phul

Kunwar

v.

Ghanshyam.

Lord Robertson

Calcutta and Allahabad High Courts, there is a contrary decision in the Bombay High Court—*Dhondo Sakharam Kulkarni v. Govind Babaji Kulkarni*, (1884) I. L. R., 9 Bom. 20, which has the high authority of Sir Charles Sargent, whose judgment is in accordance with the conclusion at which their Lordships have arrived.

It is a singular fact that while the *ratio* of the appellant's case is at variance with that which their Lordships adopt, there is only a difference of Rs. 10 in the practical result,—the appellant having maintained that she was liable for Rs. 20, while she was truly liable for only Rs. 10. On the other hand, the sum held due in India was Rs. 1,320 and this was the result of the *ad valorem* theory. It is to be observed that the appellant did not, as she should have done, stand on the first clause of the 17th article of schedule II., but, on the contrary, contributed to mislead the courts, by advancing a theory which was as unsound as that of the respondents. Their Lordships think that, in these circumstances the justice of the case is met by the first respondent (who alone appeared in the suit) paying half of the appellant's costs in the High Court and in England.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be allowed, that the decrees of the High Court and the court of the Subordinate Judge ought to be discharged, that the case ought to be remitted to the High Court with a view to the necessary steps being taken to dispose of the remaining issues reserved by the Subordinate Judge for future consideration, that the first respondent ought to pay half the appellant's costs in the High Court, and that the costs in the court of the Subordinate Judge ought to be dealt with by the Subordinate Judge after the other issues have been disposed of.

The first respondent will pay half the appellant's costs of this appeal.

Solicitor for the appellant, Mr. C. G. Farr.

Respondents were not represented.

Cause remanded.

[APPEAL FROM BENGAL.]

PRESENT—Lord Robertson, Lord Collins, Sir Arthur Wilson.

FATIMA BIBI AND OTHERS, APPELLANTS,

P. C.

1907.

2 December.

v.

SHEIKH AHMED BUKSH AND OTHERS, RESPONDENTS.

Mahomedan Law—Gift—Marz-ul-mout—Right test to be applied—Practice where concurrent findings of fact are under consideration.

Where the question was whether a certain deed of gift made by a deceased Mahomedan donor in favour of his son was invalid by reason of the Mahomedan Law of Marz-ul-mout relating to gifts made in death illness and the Courts in India applied the test which was treated as decisive on this point, viz., was the deed of gift executed by the donee under apprehension of death?—their Lordships held that the test applied was the right one.

Appeal from a decree of the abovementioned High Court, dated 14th August 1903, affirming a decree of the Subordinate Judge of Cuttack, dated 20th August 1900.

The principal question for their Lordship's consideration was whether under the Mahomedan Law a deed of gift executed on 21st May 1897 by one Moulvi Dadar Buksh in favour of his son, Respondent Sheikh Ahmed Buksh, was valid.

Mr. Jardine, K. C., and Mr. Ross for the appellants.—

Mr. DeGruyther for the respondent.

Their LORDSHIP'S JUDGMENT was delivered by

Lord Collins.—The question in this case is whether a certain deed of gift made by one Moulvi Dadar Buksh deceased in favour of his son Sheikh Ahmed Buksh is invalid by reason of the Mahomedan law of *marz-ul-mout* relating to gifts made in death illness. The deed was executed on the 21st May 1897, and on the 27th of the same month Moulvi Dadar Bakhsh, the donor, died. A great number of objections to the deed were urged by the Appellants (the Defendants) before the Subordinate Judge, all of which were considered in great detail and overruled by him in a most elaborate judgment in favour of the Respondents. That judgment was affirmed on appeal by the High Court at Fort William, and it is the concurrent judgments of these two tribunals that this Board

P. C.

1907.

Fatima Bibi.

v.

Sheikh Ahmed
Buksh.

Lord Collins.

is now called upon to overrule. The only point which the Appellants have argued on this occasion was that which no doubt goes to the root of the matter, *viz.*, whether the gift was invalid under the law of *marz-ul-mout*. The test which was treated as decisive of this point in both Courts was, Was the deed of gift executed by Dadar Buksh under apprehension of death? This, which appears to their Lordships to be the right question, is essentially one of fact, and of the weight and credibility of evidence upon which a Court of review can never be in quite as good a position to form an opinion as the Court of first instance, and it would probably be enough to prevent this Board from interfering if it should appear that there was evidence such as might justify either view without any clear preponderance of probability. Their Lordships are, however, clearly of opinion that the reasons given both by the Subordinate Judge and by the High Court, which they will not repeat, establish a large preponderance of probability in favour of the conclusion at which they both arrived.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed.

The Appellants will pay the costs of the first Respondent, who alone defended the appeal.

Solicitor: *Mr. G. C. Farr.* for the Appellants.

Solicitor: *Mr. W. W. Bax* for the Respondents.

Appeal dismissed.

P. C.

1907.

2 December.

[APPEAL FROM THE CHIEF COURT OF LOWER BURMA.]

PRESENT: *Lord Robertson, Lord Collins, Sir Arthur Wilson.*

MA WUN DI AND ANR., APPELLANTS,

v.

MA KIN AND ORS., RESPONDENTS.

Marriage—Presumption arising from cohabitation with habit and repute—Conditions precedent to its application—Practice—point not submitted to either Court in India raised before the Privy Council.

Before applying the general presumption of marriage arising from cohabitation with habit and repute it is necessary to make sure that there are the conditions necessary

for its existence. viz., firstly, there must be some body of neighbours, many or few, or some sort of public, large or small, before repute can arise; and, secondly, the habit and repute which alone is effective, is habet and repute of that particular status which, in the country in question, is lawful marriage.

P. C.
1907.
Ma Wan Di.
v.
Ma Kin.

The difference between English and Oriental customs about the relations of the sexes made such caution specially necessary in the present case.

Their Lordships of the Judicial Committee declined to entertain a point urged by the Appellants as being covered by the language of one of the issues raised in the case when it appeared that the parties by their conduct of the case had construed it in a narrower sense.

Mr. Roskill K. C. and Mr. J. W. McCarthy for the appellants.

Mr. Cowell for the Respondents was not called upon.

Their LORDSHIPS' JUDGMENT was delivered by

Lord Robertson.—The question in this appeal is one of fact; and it has been decided against Appellants by two Courts. The case, however, deserves attention, for there has been a strong appeal made to the general presumption of marriage arising from cohabitation with habit and repute.

It is necessary, before applying this presumption, to make sure that we have got the conditions necessary for its existence. It is not superfluous to suggest that, first of all, there must be some body of neighbours, many or few, or some sort of public, large or small, before repute can arise. Again, the habit and repute, which alone is effective, is habit and repute of that particular status which in the country in question, is lawful marriage.

The differences between English and Oriental customs about the relation of the sexes make such caution especially necessary. Among most English people, open cohabitation without marriage is so uncommon that the fact of cohabitation in many classes of society of itself, sets up, as matter of fact, a repute of marriage. But, in countries where customs are different it is necessary to be more discriminating, more especially owing to the laxity with which the word "wife" is used by witnesses in regard to connexions not been reprobated by opinion, but not constituting marriage.

P. C.

1907.

Ma Wun Di

Ma Kin.

Lord Robertson

In the present case the broad facts are these: a domiciled Burman, Maung Gale, has his house and wife at Moulmein in Burma; his business took him to Siam, and there he lived for years with various other women, and with the principal Appellant Ma Wun Di, who, for shortness, will be called the Appellant. The Appellant has maintained that while the other women were concubines, she was a wife, taken as a second wife, the first wife being all the time in Burma. The opposite contention is that while the Appellant was older than the other women (who all lived in the same house) and had; for that reason and also for reasons of choice, a stronger hold on the man, yet she had not made out the status of a wife. It is a noticeable feature of the case that the Appellant, in her own evidence and in the evidence of other witnesses examined for her, endeavoured to set up a marriage ceremony as having inaugurated the connexion, but her Counsel in the appeal declined to maintain this part of her case, which was represented as resting on habit and repute. Now the first difficulty is that apparently this is a part of the world where, there are not many people at all to act the part of neighbours or the public; and at all events there is no tangible evidence of recognition of this woman, in her quality of wife, by people external to the house and independent of it. What evidence she has is that of the people who either speak to the abandoned marriage ceremony or distinguish her position in the house as one of more consequence, and her stay in it as of longer duration, than those of the other women. In truth, when all is said there is little more pointing to marriage than the use of the word "wife" by some of the witnesses; and the most cursory, as well as the most careful, examination of the evidence shows that it is applied to persons whose status is not matrimonial.

Nor has the Appellant, in evidence or in argument, faced the grave difficulty which arises from the existence of the lawful wife in Burma. The following observations of the Chief Judge are opposite and weighty:—

"It is not forbidden to a Burman Buddhist to have two wives at the same time; but it is universally conceded that the leading principle of Buddhism is rather monogamy than polygamy, that polygamy is rare and that it is considered disrespect-

able. On the contrary, I should be inclined to say that if a woman cohabits with a Burman, whom she knows to be the lawful husband of another woman, the presumption is that she is a mistress and not a wife; and I would add that the presumption is strengthened if, as in the present case, the cohabitation is behind the back and without the knowledge of the first wife.

P. C.
1907.
Ma Wun Di
v.
Ma Kin.
Lord Robertson

There remains to be noticed one point which the Appellants' Counsel treated as part of his case of habit and repute, and which seemed to be regarded as the most substantial item of it. Maung Gale, in 1887, obtained a certificate of nationality as "British subject, proposing to travel in Siam." In 1891 he renewed it; and as part of the docket of renewal, which is signed by the Acting Vice-Consul, are the words; "Names of female relations living with Maung Gale: (1) Ma Wun Di, wife: (2) I Mun, sister-in-law." The argument upon this document, is that the Appellant could only be entitled to be named in this certificate of nationality if, by marriage, she had acquired her husband's certified nationality. On this, however, it is to be observed, first, that this is not evidence of repute at all; the Vice-Consul is not proved to have had any personal knowledge of these people at all, and the most it comes to is that, on this occasion, Maung Gale said that Ma Wun Di was his wife. But, further, any value or relevance which this writing has in the present case is entirely taken away by the addition of the sister-in-law, who on no theory was a naturalised British subject. The truth probably is that the entry is put in merely as an item of information identifying Maung Gale, in addition to those given in the body of the certificate.

The Appellant's Counsel endeavoured to raise the question whether the second Appellant, who is the son of the first Appellant by Maung Gale was not entitled to a share of Maung Gale's estate even assuming no marriage to be proved. Whether the third issue in the suit was in its terms, susceptible of the wider construction thus suggested for it or not, the parties, by their, conduct of the case, have construed it in the narrower sense of assuming the existence of a marriage; and the point urged by Mr. Roskill having been submitted in the conduct of the case to

P. O.
 1907.
 Ma Wun Di
 v.
 Ma Kin.
 Lord Robertson.

neither Court, their Lordships are unable to entertain this question.

Their Lordships will humbly advise His Majesty that the appeal ought to be dismissed. The Appellants will pay the costs of the appeal

Solicitors: *Messrs. Bramall & White.* for the Appellants.

Solicitors: *Messrs. Gregory Day & Co.,* for the Respondents.

Appeal dismissed.

P. C.
 1907
 20 November

(APPEAL FROM BENGAL).

PRESENT: *Lord Robertson. Lord Collins. Sir Arthur Wilson.*

MUSSUMMAT WALIHAN AND OTHERS, APPELLANTS.

v.

JOGESHWAR NARAYAN AND ANR,
 RESPONDENTS.

Practice—Suit for possession—Failure of cause of action proper decree to be made—Collateral issues, Court's power to decide and pass declaratory decree.

Where the Plaintiffs asked for possession of their mother's property on the ground that she was dead and the Court held that it was not proved that the lady was dead, the only decree that could be made was that the suit be dismissed. The mere circumstance that some of the media concludendi might be the same in other actions did not vest the Court with any right or duty to pronounce upon them.

This was an appeal from a decree of the abovementioned High Court, dated the 25th of June 1903, affirming a decree of the Subordinate Judge of Bankipur, dated the 31st of March 1900.

Mr. DeGruyther and Mr. G. A. H. Branson for the Appellants.

The Respondents did not appear.

Their LORDSHIPS' JUDGMENT was delivered by

LORD ROBERTSON.—Their Lordships are of opinion that this action ought to have been dismissed with costs, and therefore this appeal should be allowed.

The suit was one of the simplest and most plainsailing character, alike in the ground of action and the decree sought. The Plaintiffs (the present Respondents) claimed to

have possession of their mother's property on the ground that she was dead. The Courts held that it was not proved that that the lady had died (and indeed there was positive evidence that she was alive). The inevitable inference would seem to be that the suit should be dismissed. The Court which tried the case, however, had, very naturally, tried the whole case at once and had to deal with some questions as to the paternity of the Plaintiffs, and also as to the validity of certain gifts by the mother. These, however, were merely argumentative steps towards the only decree sought, *viz.*, possession; they were not presented by the Plaintiffs as separate and substantive questions affecting rights other than that of possession of their (alleged) deceased mother's estate. As regards one of those questions, it is plain that the validity of the gifts, the lady being alive, could only be determined, with her as a party to the suit. Again, the Court might quite well have first tried the issue whether the mother was dead; and, reaching, as it did, the conclusion that this essential fact was not proved, it is impossible to suggest that it could then have gone on to take up and try the other questions. Yet the present is really the same question. It appears to their Lordships that the circumstance that some of the *media concludendi* might be the same in other actions does not vest the Court with any right or duty to pronounce upon them in a suit which has gone by the board because of the failure of the ground of action, it is not surprising that no proposal was made in India to amend the record, and the record presents its original plain simplicity.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be allowed, that the decrees in both Courts below ought to be discharged and that instead thereof the suit ought to be dismissed with costs in both Courts to be paid by the Respondents.

The Respondents will pay the costs of the appeal.

Solicitors: *Messrs. Watkins and Lempriere* for the Appellants.

The Respondents did not appear.

Appeal allowed.

P. C.

1907.

Mussummat
Walihan.

v.
Jogeshwar
Narayan.

P. O.

1907

5 December.

[APPEAL FROM ALLAHABAD.]

PRESENT—Lord Robertson, Lord Collins, Sir Arthur Wilson.
MUSAMMAT SURAJMANI AND OTHERS, APPELLANTS.

v.

RABI NATH OJHA AND ANOTHER, RESPONDENTS.

Hindu Law—Will—Gift of immoveable property to a Hindu widow—Malik—Absolute estate.

When the question was whether a Hindu widow acquired a right to alienate the property (immoveable) in suit under a deed of gift or testamentary disposition of her late husband, wherein the word used was *malik wa khud ikhtiyar*, their Lordships held that in order to cut down the full proprietary rights that the word *malik* imports, something must be found in the context to qualify it and that the fact that the donee was a woman and a widow did not suffice to displace the presumption of absolute ownership implied in the word *malik*.

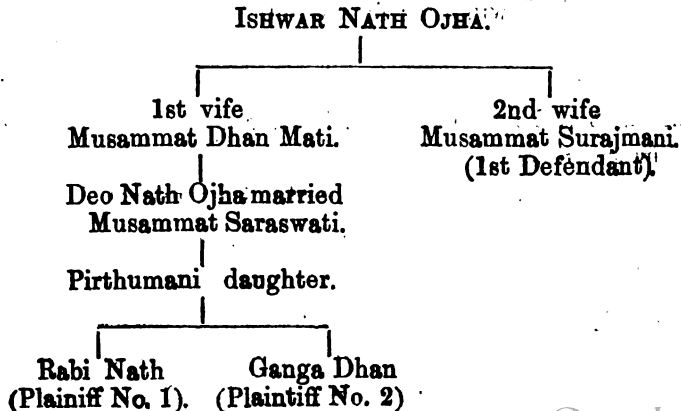
The donee in the case of *Lalit Mohun Singh Roy v. Chukkun Lal Roy*. L. R. 24 L. A. 76 s. c. I. L. R. 24 Cal. 834 (1897) was a man but the principles of interpretation laid down in that case were of general application.

Kollany Koor v. Luchmee Pershad 24 W. R. 395 1875. referred to.

Appeal from a decree of the abovementioned High Court, dated 2nd November 1903, affirming a decree of the Court of the Subordinate Judge of Gorakhpur, dated 11th March 1901.

The principal question raised on the present appeal was whether the first Appellant, Musammat Surajmani, had or had not the power of alienation in regard to the property in suit.

The following pedigree will help to explain the case:—



Mr. DeGruyther for Appellant.

Mr. Ross for the Respondents.

Their LORDSHIPS' JUDGMENT was delivered by

LORD COLLINS—This is an appeal from the High Court at Allahabad affirming the decision of the Subordinate Judge of Gorakhpur. The question is whether the first Appellant, Musammât Surajmani, acquired a right to alienate the property now in suit under a deed of gift or testamentary instrument of her late husband, Ishwar Nath Ojha. The material part of the document is as follows:—

“ I now of my own free will and accord while in a sound state of mind and in enjoyment of my senses make a gift of the entire village Dwarkapur Nankar in tappa Asnari and half of the village Telpurwa in tappa Pachhar to Musammât Dhanmati, my first wife, the entire village Doharia Khurd in tappa Benjarha and half of Mauza Telpurwa aforesaid to Musammât Surajmani, my second wife, and half of Mauza Jamla Jot, *i.e.*, an eight anna share in it, in tappa Barikpar to Musammât Sarsuti, my daughter in-law, out of the aforesaid property without consideration on the conditions that during my lifetime I shall remain in possession of the said property as heretofore, and my name shall remain recorded in respect of it in the public records and the Musammâts aforesaid shall be maintained by me, that after my death they shall under this document get their names recorded in the public records in respect of their respective properties given to them and remain in possession as owners with proprietary powers; and that if perchance I have a male issue here after, this deed of gift be considered null and void as against him.”

The words translated “as owners with proprietary powers” are in the original *malik wa khud ikhtiyar*. The appellants contend that these words are amply sufficient to confer an alienable estate. The Respondents on the other hand contended, and the Courts below have held, that under these words the lady took no more than the ordinary estate of a Hindu widow, which is inalienable except in special conditions which are not alleged to exist in this case.

After the death of her husband Musammât Surajmani

P. C.

1907

Musammât
Surajmani
v.
Babi Nath
Ojha.

P. C.

1907

Musammât
Surajmani
v.
Rabi Nath
Ojha

Lord Collins.

entered in to possession of the property given to her and has purported to dispose of it by Will in favour of her brother, Ram Narain Ojha. The present suit is brought by the Plaintiffs (Respondents) as heirs of Ishwar Nath and of Surajmani for a declaration that the latter was incompetent to execute the said Will, and it is against the decision in their favour that this appeal is brought. The effect of the word *malik* in testamentary gifts has been often discussed in cases decided in the different Courts in India where there has been apparently some fluctuation of opinion. For instance, since this case was decided in the High Court of Allahabad, the same Court, differently constituted, has refused to follow it and expressed the opinion that the words in question passed the absolute estate, *Padam Lal v. Tek Singh* I. L. R, 29 All, 217 at p. f, 221-2 (1996).

In the present case the Subordinate Judge seemed to recognize that the trend of the decisions of the Calcutta Courts was opposed to this view, but felt bound to follow what he thought was the result of the Allahabad cases, which were binding upon him.

In *Kollany Kooer v. Luchmee Pershad* 24 W. R. 395 (1875), decided in 1875, Mitter, J., in dealing with the case of a Will where the donees were the widow and daughter of the testator, and the word "*malik*" was used, thus expresses himself at p. (396):—

"As far as the words go, I think it is plain that the testator intended to make an absolute gift of his property in favour of his widow and daughter. He says that after his death they shall be (maliks) proprietors and his entire estate shall devolve upon them. In *Jotendro Mohun Tagore v. Ganendro Mohun Tagore* 18 W. R. 359 (1872) the Judicial Committee say (at p. 365): 'If an estate were given to a man simply without express words of inheritance, it would, in the absence of a conflicting context, carry by Hindu law (as under the present state of the law it does by will in England) an estate of inheritance.' In the testamentary instrument under our consideration, from the context it does not appear that the testator intended a limited gift in favour of Bani Kooer and Uma Kooer. Therefore adopting the rule of construction above

quoted we must hold that the gift in question was an absolute gift unless it can be shewn that by the Hindu law gift to a female means a limited gift or carries with it the effect of creating an estate exactly similar to the 'widows estate' under the law of inheritance. I am not aware of any such provision in the Hindu law nor have we been referred to any authority in support of it."

The question as to the effect of the word *malik* came before this Board in 1897 in the case of *Lalit Mohun Singh Roy v. Chukkun Lal Roy* L. R. 24 I. A. 76 s. c. I. L. R. 24 Cal. 834 (1897). The donee in that case was a man but the principles of interpretation laid down were of general application. Referring to the donee the testator said:—

"If no children are born to me...or if at the time of my death they are not alive, then.....my nephew.....becoming on my death my sthalabhishikta and becoming owner *malik* of all my estates and properties, &c., shall, remaining my sthalabhishikta, obtaining the management of the Iswarshebasenjoy with son, grandson, and so on in succession the proceeds of my estate.....The minor, on reaching majority, shall exercise ownership (*malikatwa*) over all the properties."

In delivering the judgment Lord Davey at p. 88 says.

"It was not disputed...that the son of the testator if there had been one, for his daughter, if there have been one, would have taken an absolute heritable and alienable estate.

Nor was it disputed that the words of the gift to the Appellant was such as to confer on him also an heritable and alienable estate. The words 'become owner *malik* of all my estate and properties' would, unless the context indicated a different meaning, be sufficient for that purpose even without the words 'enjoy with son, grandson, and so on in succession' which latter words are frequently used in Hindu wills and have acquired the force of technical words conveying an heritable and alienable estate."

This case seems to adopt and apply the same view of the word *malik* as was taken in the Calcutta case in the *Kollany Koor v. Luchmee Pershad* 24 W. R. 395 (1875) above cited, with the result that in order to cut down the

P. C

1907

Musammatt
Snrajmaniv.
Rabi Nath
Ojha

Lord Collins.

P. C.

1907

Musammat
Surajmani

v.

Rabi Nath
Ojha

Lord Collins.

full proprietary rights that the word imports something must be found in the context to qualify it. Nothing has been found in the context here or the surrounding circumstances or is relied upon by the Respondents but the fact that the donee is a woman and a widow, which was expressly decided in the last-mentioned case not to suffice. But while there is nothing in the context or surrounding facts do displace the presumption of absolute ownership implied in the word *malik*, the context does seem to strengthen the presumption that the intention was that *malik* should bear its proper technical meaning. It is to be observed that the gift to the testator's daughter-in-law, Mussammat Saraswati, is made in precisely the same terms. The learned Counsel for the Respondents was unable to adduce any reason for holding that in her case the gift should be cut down to anything less than a full proprietary right, and, if this be admitted, the Respondents have to contend for two contradictory interpretations of the same phrase.

In the result, therefore with the greatest respect for the learned Judges in the Courts below, their Lordships are unable to agree with their decision. Their Lordships will humbly advise His Majesty that the appeal be allowed and the decrees of both Courts below discharged and instead thereof the suit dismissed with costs in both Courts. The Respondents will pay to the Appellants the costs of this appeal.

Solicitors: *Messrs. Pyke, Parrott & Co.* for the Appellants.

Solicitors: *Messrs. Osborn Jenkyn & Son* for the Respondents.

Appeal allowed.

[APPEAL FROM BENGAL]

PRESENT: *Lord Robertson, Lord Collins, Sir Arthur Wilson.*

RAJA PRAMDA NATH ROY APPELLANT,

v.

RAJA RAMANI KANTA ROY AND ORS, RESPONDENTS.

Co-sharer landlords—Separate collection—Right of sharer to sue for whole rent making co-sharers Defendants—Bengal

P. G.

1907

11, December.

Tenancy Act (VIII of 1885), secs. 188—" Required or authorised to do," under the Act—Filing of suit—General principles of legal procedure.

P. C.

1907

Raja Pramda
Nath Roy
v.
Raja Ramani
Kanta Roy

Agreement either expressly proved or implied by the conduct of the parties may establish the right of co-sharer land lord to sue separately for the shares of rent receivable by them. But such an arrangement merely affects the right to sue separately for rent, and in no other respect modifies the term of the holding. The rise to bring the tenure to sale for arrears of rent remains intact, as also the right of one sharer to sue, making his co-sharers Defendants when they will not join as plaintiffs.

The filing of a suit is not a thing which the landlord is, under the Bengal Tenancy Act, required or authorised to do; and sec. 188 of the Bengal Tenancy Act is no bar to a sharer suing (under the general rules of legal procedure) for the whole rent of tenure making his co-sharers who refuse to join as Plaintiffs, Defendants in the suit.

Appeal from a decree of the above-mentioned High Court, dated the 3rd of June 1904, affirming a decree of the Court of the Subordinate Judge of Rajshahye, dated the 17th December 1900.

The principal question involved in the appeal was whether the Appellant as one of the co-sharers in the zemindari interest in an estate known As Dihi Haloti was entitled to sue for the whole rent from the putnidars of that estate, making his co-sharers in the zemindari interest parties to the suit as Defendants.

Mr. Atkin K. C., and Mr. DeGruyther for the Appellant.

Mr. Arathoon for the contesting Respondents.

Mr. Atkin replied.

Their LORDSHIPS' JUDGMENT was delivered by

Sir Arthur Wilson.—This appeal raises a question upon the construction and effect of the Bengal Tenancy Act, a short question, but one which may be of considerable importance wherever that Act applies.

The fact of the case are not in dispute, and are simple. In the year 1837 the then owner of the zemindari interest in

. P. C.

1907

Raja Pramda

Nath Roy

v.

Raja Ramani

Kanta Roy

Sir Arthur

Wilson.

an 8 annas share in Dihi Haloti created a putni tenure in those 8 annas in favour of one Abbott, at a rent reserved. The zemindari and the putni interests both underwent subsequent devolutions and at the time which is now material, the present Plaintiff (Appellant) held 6 Annas of the zemindari interest, Respondents 14 and 15 held 1 anna, and the Respondents 2, 3 and 16 one anna. The putni interest was held by the remaining Respondents, and also by Respondent 16. The last mentioned, therefore, was interested both in the zemindari and in the putni. The putni rent fell into arrear so far as the share which should have come to the Appellant was concerned.

The Appellant thereupon brought the present suit on the 17th April 1900 in the Court of the Subordinate Judge of Rajshahya. He made the putnidars Defendants, and he joined as co-Defendants his co-sharers in the zemindari on the ground that they refused to join him as Plaintiffs. The suit was framed one under the Bengal Tenancy Act to recover the whole rent of the tenure, and for that purpose to bring to sale the tenure itself. But the plaint asked in the alternative for a decree for the Plaintiff's share of the rent

The Subordinate Judge refused to make a decree under the Bengal Tenancy Act for the whole putni rent, and gave a decree only for the Plaintiff's share of the rent. On appeal, the case came before two Judges of the High Court, Ghose and Geidt J. J., who differed in opinion, Ghose, J., holding that the view of the Subordinate Judge was correct, Geidt J., being contrary to the opinion. In consequence of this difference the case was referred to a third Judge, Brett, J., who agreed with Ghose, J., with the result that the appeal was dismissed. Against the decision the present appeal has been brought, and it lies upon their Lordships to determine which of the views taken by the learned Judge ought to prevail.

Sec. 65 of the Bengal Tenancy Act enacts that:—

"Where a tenant is a permanent tenure holder he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and then rent shall be a first charge thereon."

Sec. 159 and the following sections provide the means and procedure for so bringing the tenure to sale, and for the can-

cellation of incumbrances thereupon. The only other section which it is necessary to refer to is sec. 188, which says that:—

"Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them."

By the express of the Bengal Tenancy Act, in the event of rent being unpaid, the owners of the zemindari interest are entitled, by suit under that Act to bring a putni to sale, with the consequences prescribed by the Act. And it is a general rule—a rule not derived from the Bengal Tenancy Act, but from quite another branch of law, namely, the general principles of legal procedure—that a sharer, whose co-sharer, refuse to join as plaintiffs, can bring them into the suit as Defendants, and sue for the whole rent of the tenure. This must apparently be the law applicable to the present case, unless there be something to exclude the case from the operation of the general rules.

For the purpose of this exclusion, what was relied on this: It was said that, by express or implied agreement between the zemindars and the putnidars, the shares in the putni rent of the several zemindars were to be paid, and so far as they were paid at all, were, in fact, paid separately; and it was contended that that agreement, on the one hand, entitled the separate zemindars to sue for separate shares, and to bring to sale the right, title and interest of the putnidars, but, on the other hand, either precluded the zemindars altogether from obtaining a decree under the Bengal Tenancy Act for the rent as a whole, or at any rate prevented one of the zemindars from doing so by making his co-sharers Defendants.

This was the contention which prevailed with the Subordinate Judge and with two out of the three Judges in the High Court.

The evidence of the alleged agreement consisted of certain decrees, which seemed to show that the shares of the rent had been from time to time separately recovered. It has long been held in Bengal that agreement, either expressly proved

P. C.

1907

Raja Pramda
Nath Roy
v.
Raja Ramani
Kanta Roy

Sir Arthur
Wilson.

P. C.

1907

Raja Pramda

Nath Roy

v.

Raja Ramani

Kanta Roy

Sir Arthur

Wilson.

or implied by the conduct of the parties, may establish the right to sue separately for the shares of rent receivable by the separate shareholders; and their Lordships have no inclination to question that course of rulings.

But it has been equally clearly laid down in Bengal that such an arrangement, expressed or implied, merely affects the right to sue separately for rent, and in no other respect modifies the terms of the holding; and their Lordships think that this is clearly a sound view of the law. And it appears to their Lordships to be sufficient ground upon which to decide this appeal, for it follows, from the propositions referred to, that the right to bring the tenure to sale for arrears of rent remains intact, and also the right of one sharer to sue, making his co-sharers Defendants when they will not join as Plaintiffs.

It only remains to notice sec. 188 cited above. It was suggested in argument that this section precludes a suit under the Act, for the aggregate rent of the tenure, unless all those entitled to share in the rent join as Plaintiffs. Their Lordships are not impressed by this argument. The filing of a suit is not a thing which the landlord is, under the Act, required or authorised to do. It is an application to the Court for relief against an alleged grievance, which the Plaintiff is entitled to submit, not by reason of any provision of the Tenancy Act, but under the general law.

Their Lordship will humbly advise His Majesty that his appeal should be allowed, that the decrees of both Courts in India should be discharged, and that instead thereof it ought to be declared that the Appellant is competent to bring a suit under the Bengal Tenancy Act, for the whole rent due in respect of the property in suit, that the case ought to be remitted to the High Court to take the necessary steps for the disposal of on the footing of the above declaration that the Respondents who defended the appeal to the High Court ought to pay the costs thereof, and that the costs in the Court of the Subordinate Judge ought to be dealt with by that Judge on the above footing.

The Respondents who defended this appeal will pay the costs of it.

Solicitors: Messrs Downer and Johnson for the Appellant;

Solicitors: *Messrs. T. L. Wilson & Co.* for the Respondents
Nos. 1, 2, 3. and 16.

Other Respondents did not appear.

Appeal allowed.

Case remanded.

[CONSOLIDATED APPEALS FROM OUDH.*]

PRESENT: *Lord Robertson, Lord Collins, Sir Arthur
Wilson.*

MUHAMMAD NASEEM

v.

MIRZA MUHAMMAD ABBAS ALI KHAN.

*Suit for redemption—Mortgage deed—Construction—
Accounts—Compound interest—Maintenance costs—Enhanced
Government revenue—Arrears of rent, statute barred or
otherwise—Previous suit for possession—Account filed there-
in—Estoppel—Res judicata—Recovery of costs thereof—
Practice—Point not taken before either of the lower Courts,
whether open before their Lordships.*

On the construction of cl. (4) of the mortgage deed, which provided that "in case of default in payment by me (mortgagor) of instalments of interest at the time herein appointed, the mortgagee shall have, immediately on such default, power either to recover the whole of his principal, interest, and (sud mazid munafa mazkura) further interest on the said interest according to the rate herein fixed,... ..; or the said mortgagee shall in default of payment of the instalment or instalments of interest aforesaid take possession of the mortgaged property," their Lordships agreed with the lower Appellate Court that the mortgagor was not liable for compound interest since the mortgagee entered into possession of the mortgaged premises.

Their Lordships upheld the concurrent finding of both the lower Courts that under the mortgage deed in this case the mortgagee was entitled to get from the mortgagor over and above the usufruct of the mortgaged property the amount paid by him on account of maintenance and enhanced Government revenue.

Under cl. (10) of the mortgage deed which provided that "whenever after the term of the mortgage or during the said term I (mortgagor) pay to the mortgagee in any *khali*

P. C.

1907.

19, November
and
11, December.

* Consolidated appeals of Muhammad Naseem against Mirza Muhammad Abbas Ali Khan; of Muhammad Naseem against Mirza Muhammad Abbas Ali Khan; and of Mirza Muhammad Abbas Ali Khan against Muhammad Naseem.

P. C.

1907

Muhammad
Naseem

v.

Mirza Muham-
ammad Abbas
Ali Khan.

fasl (fallow season) i. e. in the month of Jeth, the whole of the mortgage money and the whole of the interest together with Government revenue, arrears of rent, and *talavi* advances due from tenants, and other expenses incurred under the terms of the document, without raising any objection of law such as limitation, etc. I, the mortgagor, shall have power to redeem the mortgaged property," their Lordships agreed with the lower Courts that the mortgagee was entitled against the mortgagor to arrears of rent due from tenants even when such arrears were statute barred as against the tenants.

The mortgagee had previously brought a suit against the mortgagor alleging that at the date of the suit there was due to him a sum of Rs. 33,087-13-3½ and praying for a decree for possession of the property or in the alternative for recovery of that sum with further interest. A Commissioner appointed to make up the accounts reported that Rs. 33,087-9-8½ were due to the mortgagee at the date of the suit. The Court in giving judgment held that there was no necessity for passing an order as to the amount due under the mortgage beyond saying that the account was correct and then proceeded to give the mortgagee a decree for possession. The amount alleged to be due by the mortgagee and found due by the Commissioner was arrived at by calculating compound interest on unpaid instalments of interest. It was contended by the mortgagee in a subsequent suit brought against him by the mortgagor for redemption of the mortgaged property that the decree in the previous suit must be accepted as settling the amount due to the mortgagee on the date of that suit.

Held by their Lordships, who adopted the conclusion of the lower Appellate Court, that nothing had occurred in the previous suit to raise an estoppel against the mortgagor and therefore he might in the subsequent suit show if he could that under the terms of the deed compound interest was not payable.

The mortgagee was not entitled to recover the costs of the previous suit in the absence of any provision in that behalf in the mortgage deed.

A point not taken by a party before either of the lower Courts was not open to it at the time of the hearing of the appeal before their Lordships.

Consolidated appeals from two decrees of the Court of the Judicial Commissioner of Oudh, dated the 27th July of 1904, which varied a decree of the Court of the Subordinate Judge of Bara Banki, dated the 29th November of 1902.

Their Lordships' Judgment was delivered by

Lord Collins.—These are consolidated appeals from two decrees of the Court of the Judicial Commissioner of Oudh. The principal Appellant obtained leave to appeal in India in the usual way. The Cross Appellant obtained from His Majesty in council special leave to appeal.

The questions in these appeals turn upon the construction of a deed of mortgage and relate to the terms upon which the mortgagor was entitled to redeem. The mortgage was executed by one Chaudhri Imdad Ashraf in favour of the Respondent on 30th September 1885. The material parts of the deed are set out in the Record and are abstracted in the judgments below, and need not be here repeated. The mortgage money was Rs. 29,000, and the rate of interest 10 per cent, per annum. By the 15th September 1902 the mortgagor had paid in all Rs. 13,461 on account of interest. On the 4th of November 1886 he paid Rs. 2,699 on account of principal. Afterwards he made default in paying interest, and the mortgagee instituted a suit for possession, and on 18th September 1893 got a decree under which he was put in possession on the 27th January 1894. The mortgagor on 21st December 1899 sold a portion of the mortgaged property to the Appellant, Chaudhri Muhammad Naseem, who, on the 5th June 1900, tendered to the mortgagee a sum of Rs. 37,000 in redemption of the mortgage. The tender was refused, and this suit for redemption was instituted by the Appellant and the mortgagor. One of the chief matters in controversy was whether compound interest was in the circumstances payable by the mortgagor. This point was decided by the Subordinate Judge in favour of the mortgagee, but on appeal the Judicial Commissioners took a different view and disallowed it. There were also other items in the account as to which disputes arose which were decided by both Courts in favour of the mortgagee. The result was that on an account taken on the basis of the interpretation and findings adopted by the Judicial Commissioners, it appeared that the sum of Rs. 37,000 which on the 5th June 1900 had been tendered by the mortgagor and refused by the mortgagee as the sum payable to entitle the former to redeem, was less than the true amount as ascertained by the judgment of the Judicial Commissioners.

P. C.

1907

Muhammad Naseem

v.

Mirza Mahomed Abbas Ali Khan.

P. C.

1907

Muhammad Na-
seemv.
Mirza Mahom-
mad Abbas Ali
Khan.

Lord Collins.

by about Rs. 200. Against this decision both sides have appealed, after having first been heard on motions to vary in certain respects the terms of the decrees. Naturally, on the hearing of the appeals before this Board each side tried to vary the account in his favour by attacking particular items so as to establish or destroy the sufficiency of the tender.

A number of these controverted items had involved inquiry into the facts in the Court of first instance, and were accordingly reported upon by a Commissioner appointed by the Subordinate Judge, who made the report the basis of his decision. It is, of course, impossible for this Board to review findings of fact on such materials, nor were they invited to do so, but it will be found that the real controversy narrows itself down to some two or three questions of principle, which have been discussed and decided in the Courts below. These questions would appear to be—

1. On the true construction of the agreement, is the mortgagor liable for compound interest since the mortgagee entered into possession of the mortgaged premises?

2. Is the mortgagee entitled to get from the mortgagor over and above the usufruct of the mortgaged property the amount paid by him on account of maintenance and enhanced Government revenue?

3. Is the mortgagee entitled against the mortgagor to arrears of rent due from tenants even where such arrears are statute-barred as against the tenants?

4. Is the mortgagee entitled to credit for the whole of the profits during the period when, in consequence of part payment, the whole debt was no longer due?

5. Is the mortgagor entitled, on the taking of accounts, to interest on payments made by him in discharge of the principal?

Their Lordships will consider these points in their order:—

First, as to compound interest. This turns upon the construction of clause 4 of the agreement. On this point their Lordships agree with the reasoning and interpretation of the Judicial Commissioners.

Secondly, as to maintenance and enhanced revenue, even if the point as to maintenance is still open to the mortgagor,

which is doubtful, their Lordships adopt the construction of the agreement on these points in which both the Courts below concurred.

Thirdly, as to statute-barred rent, their Lordships agree that this point, as held by the Subordinate Judge, is met by the express language of the 10th clause of the mortgage deed.

Points 4 and 5 were not taken by the mortgagor either before the Subordinate Judge or the Judicial Commissioners, and are not now open to the mortgagors, neither is there anything to be found in the agreement to support them.

With regard to the "reasons" put by the mortgagee for his Cross Appeal to His Majesty in Council, their Lordships adopt the conclusions and reasons of the Court below on the 1st, 3rd, and 4th of those "reasons." The 2nd reason raises the question of compound interest, which has already been dealt with. The fifth is not open to the mortgagee; the fact that he abstained from taking it is made the subject of comment by the Commissioners.

The result is that, in the opinion of their Lordships, the appeals and the cross appeal all fail, and they will therefore humbly advise His Majesty that they should be dismissed.

The costs of the appeals will be borne by the respective Appellants.

Solicitors: *Messrs. Barrow, Rogers and Nevill* for Muhammad Nasseem.

Solicitors: *Messrs. Young, Jackson, Beard and King* for Mirza Muhammad Abbas Ali Khan.

Appeals and Cross-Appeal dismissed.

[APPEAL FROM OUDEH.]

PRESENT: *Lord Robertson, Lord Collins, Sir Arthur Wilson.*

RAJA GOKULDAS AND ORS., APPELLANTS,

v.

SHETH GHASIRAM, RESPONDENT.

Mortgage decree—Construction—Future interest—Interest to date of realisation.

A mortgagee decree directed payment of mortgage money and cost of the suit with future interest to the date fixed for payment.

Held, on a construction of the decree—That the decree-holder was entitled to interest until realisation;

P. O.

1907

Muhammad Nasseem.

v.
Mirza Mahom-
mad Abbas Ali
Khan.

Lord Collins.

P. C.

1907

29th November.

P. C.

1907

Raja Gokuldas
v.
Sheth Ghasiram.

Maharaja of Bharatpur v. Ram Kanno Dei, 5 C. W. N. 137 s. c. L. R. 28, I. A. 35, I. L. R. 23 All. 181 (1900), and *Rani Sundar Koer v. Rai Sham Krishen*, 11 C. W. N. 249, s. c. L. R. 34 I. A. 9 (1906) followed.

Appeal for a decree of the above-mentioned Court of 30th July 1904 reversing a decree of the Court of the Civil Judge of Narsingpur, dated 4th November 1903.

Mr. C. W. Arathoon for the Appellants.

No one for the Respondent.

THEIR LORDSHIP'S JUDGMENT was delivered by

Lord Robertson.—Their Lordships have examined the decisions of this Board relied upon by the Appellants (*Maharaja of Bharatpur v. Ram Kanno Dei*, 5 C. W. N. 137: s. c. L. R. 28 I. A. 35; I. L. R. 23 All. 181 (1900), *Rani Sundar Koer v. Rai Sham Krishen*, 11 C. W. N. 249: s. c. L. R. 34 I. A. 9 (1906), and find that they fully sustain the contention of the Appellants. They will therefore humbly advise His Majesty that the appeal ought to be allowed, the judgment of the Additional Judicial Commissioner reversed with costs and the order of the Civil Judge restored.

The Respondent will pay the costs of the appeal.

Solicitor: *Messrs T. L. Wilson & Co.* for the Appellants.

Respondents did not appear.

Appeal allowed.

P. C.

1908

24th January.

[CONSOLIDATED APPEALS FROM BENGAL]

PRESENT: *Lord Robertson, Lord Collins, Sir Arthur Wilson.*

BAIJNATH GAENKA, APPELLANT,

v-

RAMDHARI CHOWDHRY AND OTHERS, RESPONDENTS,

AND

DEO NANDAN PERSHAD, APPELLANT,

v.

RAMDHARI CHOWDHRY AND OTHERS, RESPONDENTS.

Mahomedan Law—Pre-emption—Talab-i-mowashibat and talab-i-istishad—Unreasonable Delay, a question of fact—Action for pre-emption—Claimants, co sharers as well as mortgagees—Deposit of mortgage money in Court by purchaser—Withdraal by claimants—Waiver of claim.

The right of pre-emption must be exercised, and the claims necessary to give effect to it must be made with the utmost promptitude, and any unreasonable and unnecessary delay is to be construed as an election not to pre-empt. Whether there has been such delay is a question to be determined upon the facts of the particular case.

The plaintiffs, in this case, claimed the right to pre-empt by reason of their having previously acquired a share in the property. They had also obtained the transfer of *zurpeshgi* mortgage binding the share the sale of which was the occasion of the present suit. In the course of the suit, the purchaser, Defendant, deposited the mortgage amount in Court, and the same was withdrawn by the plaintiff.

Held, that until a decree for pre-emption was made the purchaser owned the land, and had a right to redeem; and that the taking out of the money by the Plaintiffs, as mortgagees, was no recognition of anything more than that, and was quite consistent with their claim to pre-empt.

Two consolidated appeals from two decrees of the above-mentioned High Court, both dated 20th January 1904 reversing two decrees of the Court of the Subordinate Judge of Monghyr both dated 31st, March 1900 and dismissing the Appellant's suit.

The main question raised on the appeals was whether the Appellants were entitled to pre-empt a four annas share in certain properties sold on 17th December 1907, by Anupbati Koeri (Respondent No. 2) to Nirbhoy Chowdhry (original Defendant No. 1), who died *pendente lite* and was represented by Respondent No. 1 and others.

The two suits were analogous and had been tried together at the instance of the parties. It was admitted that both suits would be governed by one judgment.

Mr. DeGruyther and *Mr. G. A. H. Branson* for the Appellants.

Mr. Jardine, K. C. and *Mr. Cowell* for the Respondents.

Their LORDSHIP'S JUDGMENT was delivered by

Sir Arthur Wilson:—These two consolidated appeals arise out of two suits, one brought by Mangni Ram, the other by Jowhri Lal, to enforce a right of pre-emption in respect of a share in certain properties comprised in taluka Rasalpur Bhatowni.

By conveyances, dated 28th January 1891 and 9th July 1897, Magni and Jowhuri had become the owners in equal shares of 12 annas of the property. The remaining four annas belonged to the Respondent, Anupbati Koeri, who on the 17th December, 1897 sold those four annas to Nirbhoy Chowdhry;

P. C.

1908

Bajinath Gaerka

v.

Ramdhari Chowdhry and

Deo Nandan Pershad

v.

Ramdhari Chowdhry.

P. C.

1908

Bajmath Gaen-
ka

v.

Ramdhari Chow-
dhry

and

Doo Nandan
Perahad

v.

Ramdhari Chow-
dhry.Sir Arthur Wil-
son.

and that is the sale against which the right of pre-emption is claimed. It has been found that Jowhuri first heard of the sale on the 20th December 1897, and that thereupon he at once made the immediate claim to pre-empt which the law requires. Mangni first heard of the sale on the 5th of January 1898, and at once made his immediate claim. No question therefore arises with regard to the first claim by each of the two men. The principal controversy between the parties, and the point on which the Courts below have differed, is an alleged delay in making the second claim, the claim with witnesses, which also is required by law.

Jowhuri, on hearing of this sale, which he did at Monghyr, at once sent to his agent at or near Gogri to procure from the Registry Office a copy of the sale deed. The agent obtained that copy and sent it to Jowhuri, who actually received it on the 4th January. The High Court differing from the Subordinate Judge, has found unreasonable delay at two points of these proceedings. It was held, first, that the copy from the Registry was not obtained and sent off as soon as it might have been. But an examination of the Official Calendar shows clearly that the learned Judges were led to this conclusion by a misapprehension as to the time during which the Registry Office was closed for the Christmas Vacation. The High Court held, secondly, that Jowhuri was guilty of wilful delay by his refusal to receive the packet containing the copy of the sale deed from the Post Office peon. This conclusion is based upon the evidence of the peon himself which the learned Judge believed. But the Judge who had this witness before him disbelieved his story. The story is admittedly inconsistent with the rules of the Post Office; and it finds no support from the witness's own endorsement made at the time. Their Lordships think that the Subordinate Judge was right in rejecting that story, and therefore the second allegation of delay falls.

The more serious case of delay is said to have occurred subsequently, and with respect to it the position of Mangni and Jowhuri is identical. On the 5th January they knew everything which it was essential to know. On that day they took the advice of local barrister, and in accordance with his advice they on the next day, the 6th January, applied to the proper officer for a police guard to protect the messengers and the

money, which it was proposed those messengers should tender. This guard they obtained on 7th and the messengers started. On that day those messengers made the claim (and, as has been found, with due formalities) at the house of Nirbhoy, the purchaser. On subsequent days the claim was renewed at the house of the vendor, and upon the land. The question that arises is whether the interval that elapsed between the 5th January and the 7th January is a fatal delay. The Subordinate Judge held that it was not; the High Court held that it was.

There is no question of law in the case. It is clear that the right of pre-emption must be exercised, and the claims necessary to give effect to it must be made, with the utmost promptitude, and that any unreasonable or unnecessary delay is to be construed as an election not to pre-empt. And whether there has been such delay is a question to be determined upon the facts of each particular case. It is enough for their Lordships to say that, in their opinion, the grounds stated by the learned Judges of the High Court for overruling the decision of the first Court, on a pure question of fact, were insufficient.

Another point argued on behalf of the Respondents arises in this way:—The two Plaintiffs Mangni and Jowhari had obtained a transfer of a *zurpeshgi* mortgage binding the four annas share sold by Anupbati to Nirbhoy. After that sale Nirbhoy, paid the mortgage money into Court, in accordance with the provisions of the Transfer of Property Act, for the purpose of redeeming the mortgage; and after some hesitation the two Plaintiffs took out that money. It was contended that by so doing they had recognised the title of Nirbhoy under his purchase and could not claim pre-emption.

Their Lordship cannot agree with this contention. Until a decree for pre-emption was made Nirbhoy owned the land as purchaser, and had a right to redeem. The taking out of the money by the Plaintiffs, as mortgagees, was no recognition of anything more than this, and was quite consistent with the claim to pre-empt.

There remains only one other point for consideration, as to which again the Courts in India have differed; and that is as to the amount actually paid by Nirbhoy to Anupbati, the difference being Rs. 7,850. As to this point their Lordships do not

P. C.

1908.

Baijnath Gaan-
ka.

v.

Ramdhari Chow
dhry.

and

Deo Nandan
Persad.

v.

Ramdhari Chow
dhry.Sir Arthur Wil-
son

P. C.

1908

Baijnath Gaen-
ka

v.

Ramdhari Chow
dhry.
andDeo Nandan
Pershad

v.

Ramdhari Chow
dhry.—
Sir Arthur Wil-
son.

find a clear and positive finding by the Subordinate Judge that the full sum named in the deed of sale was not in fact paid; and they are not prepared to dissent upon this point from the judgment of the High Court.

Their Lordships will humbly advice His Majesty that these appeals should be allowed; that the decrees of the High Court should be discharged with costs; that the decrees of the Court of the Subordinate Judge should be varied by directing the price of the pre-emption to be calculated on the sum of Rs. 44,850 (the price named in the deed of sale from Anuphati to Nirbhoy) and the amounts to be deposited in the Court of the Subordinate Judge within such times as the High Court or the Subordinate Judge may determine; that subject to their variations and the payments to the Appellants of Additional costs (if any) the decrees of the Subordinate Judge should be restored; and that the cases should be remitted to the High Court in order that the necessary steps may be taken for the disposal thereof on the above footing.

The Respondents who have resisted the appeals will pay the costs thereof.

Solicitors: *Messrs. Walkins and Liemprieve* for the Appellants.

Solicitors: *Messrs. A. H. Arnold and Son* for the Respondents.

Appeal allowed.



[APPEAL FROM OUDH].

PRESENT: *Lord Ashbourne, Lord Macnaghten, Lord Atkinson, Sir Arthur Wilson.*THAKUR JOWAHIR SINGH, APPELLANT,
PLAINTIFF,

v.

THAKUR BALDEO BAKSH SINGH AND ORS.,
RESPONDENTS, DEFENDANTS.

P. C.

1907.

June 11,

Mortgage—Prior mortgage of whole property—Shares subsequently mortgaged to equal persons—Rights of mortgagees, how to be adjusted—Right to redeem—Successive redemption suits by different mortgagees—Res-judicata—Civil Procedure Code, (Act XIV of 1882), sec. 12, Expl. II.

A property belonging to A and B was mortgaged to X in 1879. In 1888 A mortgaged his share only to Y and in 1897 B similarly mortgaged his share to Z. Y had redeemed X in 1891. Z first sought to redeem Y in respect of the share mortgaged to himself, but on Y's objection that the whole property should be redeemed, Z's suit was dismissed and he subsequently instituted a suit to redeem the whole property and succeeded. In a suit by Y to redeem Z in respect of the share mortgaged to Y.

Held—That as Z did not accept Y's offer to redeem the whole property, Y was entitled to redeem the share mortgaged to him.

This was an appeal from a decree of the Judicial Commissioner of Oudh, dated 4th August 1904, which reversed a decree of the Court of the District Judge of Sitapur, the said letter decree having reversed a decree of the Court of the Subordinate Judge of Sitapur, dated the 29th January 1902.

The principal question raised on the present appeal was whether the Appellant, Thakur Jowahir Singh, was entitled to recover possession from the first Respondent, Thakur Baldeo Singh, of a 4 anna share in the villages of Kahrawan and Mahrawan.

Mr. Leslie DeGruyther for the Appellant.

Mr. G. R. A. Ross for the Respondent.

Their LORDSHIP'S JUDGMENT was delivered by

Lord Macnaghten.—Their Lordships will humbly advise His Majesty that the decree appealed from should be reversed with costs. The respondent Baldeo Singh not having accepted the offer that the twelve-anna share should be redeemed, their Lordships will humbly advise His Majesty that an order should be made declaring that the Appellant is entitled by

virtue of the mortgage deed, dated the 10th of December 1888 to redeem the four annas share comprised in the mortgage deed, dated the 5th of September 1879, with consequential directions.

The Respondent Baldeo Bakhsh Singh will pay the costs of the appeal.

Appeal decreed.

P. C.

1907.

December, 2.

(APPEAL FROM THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL.)

PRESENT:—*Lord Robertson, Lord Collins & Sir Arthur Wilson.*
GURU PRASANNA LAHIRI AND OTHERS.

v.

JOTINDRA MOHUN LAHIRI.

*Mesne profits, decree for—Satisfaction—Apportionment—
Contribution.*

When a decree for mesne profits was satisfied by some out of the entire body of persons liable thereunder by payments made from time to time, and a question arose as to the principle which would regulate contribution amongst the parties themselves:

Held, that the correct principle was to allow interest on the sums paid from the date of payment, and then to apportion rateably the whole sum crediting interest on each amount paid in favour of the party on whose behalf it was paid, from the date of payment until the final satisfaction of the decree for mesne profits.

Judgment of the Judicial Committee in *Jotindra v. Mohan Lahiri v. Guru Prosonno Lahiri* explained.

Appeal by the defendants against a judgment of the Oalcutta High Court (Brett and Mookerjee J. J.) dated the 29th August 1904.

Suit for contribution of sums paid in satisfaction of a decree for mesne profits.

The judgment of the Judicial Committee was delivered by

Lord Collins.—The history of this long and complicated litigation, which has now, it is to be hoped, reached its ultimate stage, is compendiously stated in the judgment of this Board delivered by Sir Arthur Wilson on 23rd March 1904, which is appended to this case, and only a very brief statement is necessary to make the particular point that now arises for discussion intelligible.

In 1882 the parties to this appeal had become liable jointly for the payment of a sum which had been decreed to be paid

by them for mesne profits of a certain share in an estate, of which share they had for many years been in wrongful possession. The amount for which the decree was made was finally ascertained on 23rd April 1882 as Rs. 85,795 upon which sum interest at six per cent. from the 12th May 1897 was payable until realization. The shares in the estate of the parties to this action were liable to be seized in execution under the decree. The liability under this decree was finally extinguished by payments made at different times by the various parties to this suit extending down to 17th September 1889, during all which time interest was running on so much of the decreed amount as for the time being remained unsatisfied.

After the liability to the decree-holders had been thus satisfied, a dispute which has led to much litigation arose between the contributors as to their reciprocal rights and obligations towards each other, having regard to the amounts of their several contributions, the times at which they had been made, and the different proportions of their interest in the other shares in the estate itself. This litigation was carried up to the High Court at Calcutta and from thence to this Board, who remitted it to the High Court with direction as to certain accounts to be taken and the consequent relief to be given. The High Court accordingly took accounts and made a decree finding a certain balance payable to the plaintiff, the now respondent. Against that decree the other parties or their representatives, by leave of the High Court, now appeal. They take exception to two mistakes, as they allege, of fact:—

(a) That the account has been taken and interest calculated from too early a date, *viz.*, from the 12th May 1879 instead of from the 3rd April 1882.

(b) That a sum of Rs. 740 should not have been credited to the respondent.

Their Lordships are of opinion that both these objections, which go to fact only and not to principle, fail, for the reasons given by the respondent. The appellants further contended that the Court below have not correctly followed out the directions of this Board in the manner in which they have adjusted the shares and obligations of the parties *inter se* upon the accounts so taken. As pointed out in Sir Arthur Wilson's judgment, the inequality which it was sought to remedy by the accounts di-

P. C.
 1907.
 Guru Prasanna
 Lahiri
 v.
 Jotindra Mohun
 Lahiri.
 Lord Collins.

P. C.

1907.

Guru Prasanna
Lahiriv.
Jotindra Mohun
Lahiri.

Lord Collins.

rected was that which arose by reason of the fact that the payments which stopped *protanto* the running of interest on the decretal amount operated for the benefit of those who had not paid them as well as of those who had. The provision that, in taking the account interest should be allowed on the sums paid from the date of payment, adjusted *inter se* the inequality thus arising between the contributors, and from an account so taken it was possible to assess the exact proportion which each contributor had in fact borne in discharging the common burden. This being ascertained, the amount in fact contributed had to be compared with the share of the common obligation properly falling to him in virtue of his proportionate interest in the estate. The shares in the estate of each of the contributors were not in controversy, and the only figure open to discussion would now be what ought to be taken as the figure representing the total debt to be discharged, for this is what had to be distributed among the contributors and borne by them in proportion to their interests. Three different figures have been suggested in the discussion:—

(1) That which represents the actual sum which was received by the decree-holder in satisfaction of his decree, *viz.*, Rs. 125,826.

(2) The sum arrived at under the order of the Privy Council, on the footing that the principal and interest had all been paid on the same day, *viz.*, the 17th September 1889, which amounted to Rs. 139,059.

(3) The sum arrived at as the result of the other account directed by the Privy Council, *viz.*, “crediting interest at the same rate on each amount paid in favour of the party on whose behalf it was paid from the date of payment until the final satisfaction of the decree, *viz.*, Rs. 148,873.

Of these figures the first, though it shows the total sum actually received by the decree-holder, ignores the relative positions of the contributors towards each other in view of the fact that the debt was wiped out at the times and in the amounts of the several contributions from time to time made by the debtors: it does not translate into figures the separate and aggregate cost to the contributors at which the debt was wiped out. The second represents only a notional state of facts, and cannot be taken as affording a true total for division according to interests.

It seems to their Lordships that the third figure is that which should be taken as representing between the parties the whole burden which is to be divided among them in proportion to their several interests in the property. The burden to be borne was made heavier to all by reason of the length of time over which the liquidation was protracted, while the rights of individuals are equalised by the allowance of interest on their contributions from the time they were made.

Thus we have in this figure the total-aggregate cost at which *inter se* the common debt was liquidated, and this, therefore, is the burden to be assumed among them in properly adjusted shares.

In their Lordship's opinion, therefore, the account should be taken on this footing, and the amounts of their several contributions already ascertained set off against their several liabilities so adjusted. This is in effect what has been done by the learned judges below, though they have arrived at their result by a somewhat longer process.

Having first in the prescribed method ascertained the amounts contributed by each party to the liquidation, they have in the first instance measured each contributor's share of the burden by treating it as an aliquot part of the second of the above figures, *viz.*, Rs. 139,059. They have then ascertained the difference between that figure and No. 3, *viz.*, Rs. 148,873 at Rs 9,814, and having divided this sum in proper proportions, have added an aliquot part to the burden falling upon each contributor under the former calculation.

Having thus ascertained the share of the burden and the amount contributed by each, they have decreed the consequential relief.

Their Lordships will, therefore, humbly advise His Majesty that the decree of the High Court should be affirmed.

The appellants will pay the costs of this appeal.

Appeal dismissed.

P. C.

1907.

Guru Prasanna
Lahiri

v.

Jotindra Mohun
Lahiri.

Lord Collins.

P. O.

1907.

T. P. PETHERMAL CHETTY

versus

B. MUNIANDY SERVAI AND OTHERS.

Benamée transaction, to effect a fraud—Object defeated—Right to recover possession—Instrument not operative—Setting aside of the instrument whether necessary—Limitation Act (XV of 1877), Art., 91, 154.

In order to save his property from an equitable mortgage one C executed a *benamée* deed of sale in 1895, in favour of the defendant. The equitable mortgagee brought a suit and got a decree against C, and his *benamée* transferee who paid him up. The representative of C brought this suit for possession of the property purported to have been sold. *Held*, that he was entitled to recover possession inasmuch as he was not carrying out the illegal transaction, but was seeking to put every one in the same position as they were in before that transaction was determined upon. Moreover the purpose of the fraud having been defeated there was nothing to prevent the plaintiff from recovering possession of his property. *Taylor v. Bowers*, 1 Q. B. D., 291; *Symes v. Hughes*, L. R., 9 Eq., 475; *In re Great Berlin Steam Boat Company*, 26 Ch., s. 616; *Kearley v. Thomson*, 24 Q. B. D., 742, referred to.

In conspiracy the concert or agreement of the two minds is the offence, the overtact is but the outward and visible evidence of it. Very often the overtact is but one of the many steps necessary to the accomplishment of the illegal purpose, and may in itself be comparatively insignificant and harmless, but to enable a fraudulent confederate to retain property transferred to him in order to effect a fraud, the contemplated fraud must according to the authorities be effected. Then, and then alone, the fraudulent grantor or giver, loses the right to claim the aid of the law to recover the property he has parted with.

Held, further that the sale-deed of 1895 was not an operative instrument, and it was not necessary for him to have it set aside as a preliminary to his obtaining a decree for possession, and the suit was governed by article 144, and not 91 of the Limitation Act.

APPEAL from a decree of the Chief Court of Lower Burmah. The material facts are set out in the judgment. The Courts below decreed the suit.

Defendant appealed.

Upjohn K. C. and *Baclhashe K. C.*, for the appellant,
L. DeGruyther, for the respondent.

The judgment of their Lordships was delivered by

LORD ATKINSON.—In this case, an action was originally

brought by R. Muniandy Servai, claiming through his deceased brother Chellum Servai, who was himself heir and administrator of one Muniandy Maistry, against T. P. Petherpermal Chetty, the uncle and predecessor of the appellant (thereinafter called "Petherpermal, the elder"), and two formal defendants, R. M. A. R. L. Muthia Chetty and P. R. M. P. Chinnia Chetty, to recover possession of a certain tract of paddy land about 2,500 acres in extent, known as Government waste land No. 1 situate in Tamanaing Circle, Kungyangon Township, Hanthawaddy, District Lower Burma. One Arunachellam Chetty claimed to be an incumbrancer on these lands as equitable mortgagee by deposit of the title deeds for a sum of Rs. 14,568-12-0.

On the 11th June, 1895, Chellum Servai executed a deed purporting to be conveyance on sale of the above-mentioned lands to Pethermal Chetty, the elder, a money-lender residing in Rangoon in consideration of the sum of Rs. 30,000, the receipt whereof was thereby acknowledged.

On the 18th September, 1895, Arunachellam Chetty, the equitable mortgagee, instituted a suit in the District Court of Hanthawaddy against Chellum Servai, as administrator of the estate of Muniandy Maistry deceased, and Petherpermal, the elder, in which he alleged that at the time of the execution of the above-mentioned conveyance, Petherpermal, the elder, was aware of the existence of his (Arunachellam's) claim as equitable mortgagee, and that the sum of Rs. 30,000, the consideration mentioned in the deed, had never been paid, and claimed that he might be declared entitled to hold his equitable mortgage over these lands in priority to the last-mentioned conveyance, and that the defendant Chellum Servai might be ordered to pay to him the sum of Rs. 14,568-12-0 with interest and other relief.

Petherpermal, the elder filed his defence, and the case having come on for hearing, the District judge decided, amongst other things, that Petherpermal, the elder was, at the date of the deed of conveyance to him, well aware of the existence of this equitable mortgage, and declared that the latter was entitled to priority over the former, and ordered the defendant Chellum Servai to pay to the plaintiff the amount of the latter's claim. Thereupon Petherpermai, the elder procured

P. C.
1907.
T. P. Pethermal
Chetty
v.
R. Muniandy
Servai.
Lord Atkinson.

P. C.

1907.

T. P. Pethermal
Chettyv.
R. Muniandy
Servai

Lord Atkinsons.

a loan from the two formal defendants to the present suit sufficient to enable him to discharge the amount due to Arunachellam Chetty for debt and costs, and as security for this loan he executed a mortgage of the lands now sought to be recovered. No question has been raised as to the validity of this latter incumbrance.

It is therefore clear that, whatever may have been the design to effect which the deed of the 11th June, 1895, was executed, Arunachellam Chetty, the creditor, was not by it in fact defrauded of his debt. He was paid his debt together with the costs of the litigation which he successfully prosecuted, and if his interests were prejudiced at all, it was only to the extent that he was obliged to take proceedings which, had the deed never been executed, he might possibly never have been obliged to take.

On the 30th July, 1897, R. Muniandy Servai and pethermal, the elder executed a deed of release by which the former released all his interest in the lands sued for in consideration of Rs. 1,000 paid to him by the latter. The District Judge found that the execution of this deed was procured by a misrepresentation, and declared that its only effect at law was as a receipt for the sum of Rs. 1,000. No objection was taken in the argument on the appeal in reference to the finding on this point.

It was proved by the affirmation of Muniandy Servai given in evidence in this case that the deed of the 11th June 1895. was executed in order to enable the rent to be collected and paid to the grantors, and "to quash Subramanian's case," i. e., the case of the equitable mortgagee. The District Judge held that it was a "*benamē* conveyance" made by the parties to it "in collusion to defeat" the claim of the equitable mortgagee on the lands. The Chief Court of Burma on appeal upheld that decision.

It was not pressed in argument by Counsel on behalf of the appellant that, on an issue of fact such as this, the finding of the Judge who tried the case and saw the witnesses, approved, as it was, upon appeal, should under the circumstances of the case be disturbed. The only questions, therefore, for their Lordships' decision are—

1. Is the plaintiff, despite his participation in this fraudulent attempt to defeat his creditor, entitled to recover the possession of the lands purported to be conveyed?

2. Is his right of action barred by the 91st Article of Schedule II, to the Indian Limitation Act?

Their Lordships are of opinion that their answer to the first question must be in the affirmative.

A *benamée* conveyance is not intended to be an operative instrument.

In Mayne's Hindu Law, (7th ed., p. 595, para. 446) the result of the authorities on the subject of *benamée* transactions is correctly stated thus:—

"446..... Where a transaction is once made out to be a mere *benamée* it is evident that the *benamidar* absolutely disappears from the title. His name is simply an *alias* for that of the person be neficially interested. The fact that A has assumed the name of B in order to cheat X can be no reason whatever why a court should assist or permit B to cheat A. But if A requires the help of the court to get the estate back into his own possession, or to get the title into his own name it may be very material to consider whether A has actually cheated X or not. If he has done so by means of his *alias*, then it has ceased to be a mere mask, and has become a reality. It may be very proper for a court to say that it will not allow him to resume the individuality which he has once cast off in order to defraud others. If, however, he has not defrauded anyone, there can be no reason why the court should punish his intention by giving his estate away to B, whose roguery is even more complicated than his own. This appears to be the principle of the English decisions. For instance, persons have been allowed to recover property which they had assigned away.....where they had intended to defraud creditors, who, in fact were never injured.....But where the fraudulent or illegal purpose has actually been effected by means of the colourable grant, that the maxim applies, *In pari delicto potior est conditio possidentis*. The Court will help neither party. 'Let the estate lie where it falls'."

Notwithstanding this, it is contended on behalf of the appellant that so much confusion would be imported into the law, if the maxim *in pari delicto potior est conditio possidentis* were not rigorously applied to this case, and, apparently, that the cause of commercial morality would be so much prejudiced if debtors who desired to defraud their creditors were not deterred from trusting knaves like the defendant, that in the interest of the public good, as it were, he ought to be permitted to keep for himself the property into the possession of which he was so unrighteously and unwisely put.

The answer to that is that the plaintiff, in suing to recover possession of his property, is not carrying out the illegal transaction, but is seeking to put every one, as far as possible,

P. C.

1907.

T. P. Petherm : l
Chetty

v.

R. Muniandy
Servai

Lord Atkinron.

P. O.

1907.

T. P. Pethermal
ChettyR. Muniandy
Servai.

Lord Atkinson.

in the same position as they were in before that transaction was determined upon. It is the defendant who is relying upon the fraud and is seeking to make title to the lands through and by means of it. And despite his anxiety to effect great moral ends, he cannot be permitted to do this. And, further, the purpose of the fraud having not only not been effected, but absolutely defeated, there is nothing to prevent the plaintiff from repudiating the entire transaction, revoking all authority of his confederates to carry out the fraudulent scheme, and recovering possession of his property. The decision of the Court of Appeal in *Taylor v. Bowers*, (1876) 1, Q. B. D., 291, and the authorities upon which that decision is based clearly established this. *Symes v Hughes*, (1870) L. R., 9 Eq. 479, and *In re Greas Britain Steamboat Co*, (1884) 26 Ch. D., 616, are to the same effect. And the authority of these decisions, as applied to a case like the present, is not, in their Lordships' opinion, shaken by the observations of Fry, L. J., in *Kearly v. Thomson*, (1890) 24 Q. B. D., 742.

Mr. Upjohn contended that, where there is a fraudulent arrangement to defeat creditors, such as was entered into in this case, if anything be done or any step be taken to carry out the arrangement, such as on the trial of an indictment for conspiracy, would amount to a good overt act of the conspiracy, any property transferred by the debtor to his conspirator cannot be recovered back. This, however, is obviously not the law. In conspiracy the concert or agreement of the two minds is the offence, the overt act is but the outward and the visible evidence of it. Very often the overt act is but one of the many steps necessary to the necessary of the accomplishment of the illegal purpose, and may, in itself, be comparatively insignificant and harmless; but to enable a fraudulent confederate to retain property transferred to him in order to effect a fraud, the contemplated fraud must, according to the authorities, be effected. Then, and then alone, does the fraudulent grantor, or giver, lose the right to claim the aid of the law to recover the property he has parted with.

As to the point raised on the Indian Limitation Act 1877, their Lordships are of opinion that the conveyance of the 11th June, 1895, being an inoperative instrument, as, in effect, it has been found to be, does not bar the plaintiff's right to recover possession of his land, and that it is unnecessary for him to have it set aside as a preliminary to his obtaining the relief he claims. the 144th, and not the 91st, article in the second Schedule to the Act is, therefore, that which applies to the case, and the suit has consequently been instituted in time. Their Lordships are, for these reasons, of opinion that the decision appealed from is right and should be affirmed, and that this appeal should be dismissed. They will humbly advise His Majesty accordingly. The appellant will pay the costs of the appeal.

Appeal dismissed.

[CONSOLIDATED APPEALS FROM BENGAL]

PRESENT: *Lord Robertson. Lord Collins, Sir Arthur Wilson.*

P. C.

1908

24th January.

RAJA RAI BHAGWAT DAYAL SINGH and others,
APPELLANTS,

v.

DEBI DAYAL SAHU and others, RESPONDENTS.

AND

RAJA RAI BHAGWAT DAYAL SINGH and others,
APPELLANTS.

v.

DEBI DAYAL SAHU, RESPONDENT.

Champerty—Assignment—Validity, if may be questioned by third parties—Consideration made payable upon success of suit—Gambling in litigation—Public policy—Purchase from limited owner—Hindu woman's estate—Onus on purchaser, extent of—Ratification—Contract Act (IX of 1872), sec. 196—Sale without legal necessity—Recovery by reversioner—Mesne profits, claim for.

In India an agreement cannot be avoided on the ground of champerty.

Ram Coomar Coondoo v. Chunder Canto Mookerji, L. R. 4 I. A. 23: s. c. I. L. R. 2 Cal. 233 (1876). Kunwar Ram Lal v. Nil Kanth, L. R. 20 I. A. 112 (1893). and Lal Achal Ram v. Raja Kazim Hussin Khan, 9 O. W. N. 477: s. c. L. R. 32 I. A. 113; I. L. R. 27 All. 271 (1905). *followed*.

The agreement in this case provided that out of the purchase money which was fixed at Rs. 52,600, Rs. 600 only was to be paid down and the balance when the property should be recovered.

Held—That the agreement was generally of a champertous character but was not void on that account, nor was it opposed to public policy and void as such by reason of the stipulation relating to the payment of consideration.

As assignment cannot be questioned as unfair and unconscionable by a person who was not a party to the assignment.

One who claims title under a conveyance from a Hindu woman with the usual limited interest which a Hindu woman takes, and who seeks to enforce that title against reversioners is always subject to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making and also that that alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner.

P. C.

1908

Raj Rai Bhag-
wat Dayal Singh
and others.

v.
Debi Dayal
Sahu and
others.

Ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier; and this rule is recognised in sec. 196 of the Indian Contract Act.

Where the Defendant held possession of properties under deeds of sale from a limited owner, which were found to have been executed without legal necessity, the Plaintiff's claim for mesne profits was allowed.

Two consolidated appeals from two decrees of the High Court of Judicature, at Fort William in Bengal dated 20th July 1903, modifying two decrees of the Court of the Subordinate Judge of Zillah Ranchi dated 20th December 1899, and dismissing the Appellants' suits with costs.

The main questions raised in the appeal were whether the suits were maintainable on the ground of champerty and maintenance, and whether two deeds of sale executed by certain Hindu ladies were valid and binding on the male reversioners to the estate of the last male owner in possession.

Mr. Cohen, K. C., and Mr. Brown for the Appellants.—

Sir Robert Finlay, K. O., and Mr. De Gruyther for the Respondents.—

Their LORDSHIPS' JUDGMENT was delivered by

Sir Arthur Wilson.—These consolidated appeals relate to three villages, Chiyanki, Ganka, and Lalgara, and the substantial conflict is between the first Appellant and the first Respondent.

The villages with others were formerly the property of Ram Saran Singh, who on his death was succeeded by his infant son Narayan. Narayan died, while still an infant and unmarried, on the 7th August 1879, and left surviving him his grandmother Jileb Koer, an aunt Aprup Koer, widow of Ram Saran's brother, and a stepmother Etraj Koer, widow of Ram Saran. Of these, the grandmother was heir to the boy's property, with the limited interest of a Hindu female inheriting from a male. The three ladies appear to have lived together down to the death of the grandmother, which took place on the 22nd November 1894.

On the death of the grandmother, the inheritance again opened, and the second and third Appellants, Bhan Pertsap Singh and Kirpa Narayan Singh, were then the nearest male heirs of the deceased boy. Those two persons, on the 29th

November 1895, purported to sell the three villages in question to Rajah Bhagwat Dayal Singh, the first Appellant, and that is the title under which he claims.

The first Respondent, on the other hand as the case is now put on his behalf, claims under two sale deeds executed, as it is now said, by or on behalf of the grandmother Jileb Keer, the sales being, it is contended, justified by necessity so as to pass the whole inheritance. The first of these deeds bore date the 19th January 1887. It purported to be a conveyance by way of sale, by the three ladies who have been mentioned, of two villages Chiyanki and Ganka to the first Respondent. The second deed was dated the 15th May 1891. It purported to be executed by the same three ladies in favour of one Hodges, and to convey to him by way of sale the village Lalgara. Hodges afterwards conveyed to the first Respondent.

The present suits were brought on the 29th August 1896 in the Court of the Subordinate Judge at Ranchi. The plaintiffs were the first Appellant and the two persons from whom he purchased. The sole Defendant in one suit and the substantial Defendant in the other was the first Respondent. The first related to village Lalgara, the second suit to the villages Chiyanki and Ganka. The claim in each case was for possession and mesne profits.

The first question raised in the case and argued on the appeals was whether or not the sale by the second and third Appellants to the first Appellant was void in law, so as to pass no title on the ground that it was champertous, or contrary to public policy.

For the Respondents it was boldly argued that, although the English law as to maintenance and champerty is not, as such, applicable to India, yet on other grounds what is substantially the same law is there in force. Their Lordships are of opinion that that proposition cannot be supported. In three cases *Ram Coomar Cooudoo v. Chunder Canto Mookerjee* L. R. 4 I. A. 23 : s. c. I. L. R. 2 Cal. 233 (1876). *Kunwar Ram Lal v. Nil Kanth* L. R. 20 I. A. 112 (1893). *Lal Achal Ram v. Raja Kazim Husain Khan* 9 O. W. N. 477 ; s. c. L. R. 32 I. A. 113 ; I. L. R. 27 All. 271 (1900). before this Board, a contrary doctrine has been laid down. In the last of those

P. C.

1906

Raja Rsi Bhag-
wat Dayal Singh
and others.

v.
Bibi Dayal
Sahu and
others.

Sir Arthur
Wilson.

P. C.

1908.

Raja Rai Bhag-
wat Dayal Singh
and others,
v.

Debi Dayal
Sahu and
others.

Sir Arthur
Wilson.

cases full effect was given, under circumstances closely analogous to those of the present case, to an agreement which would certainly have been void if champerty avoided transactions in India.

It was further argued that the transaction in question was contrary to public policy and void on that ground, by reason of the provision as to payment of the purchase money by the first Appellant to the second and third. The purchase money was fixed at Rs. 52,600, of which Rs. 600 was to be paid down, and the balance when the property should be recovered. Their Lordships are unable to agree to this argument. In their opinion the condition so introduced does not carry the case any further than does the champertous character of the transaction generally.

It was further said, and this was relied upon in the Courts in India, that the transaction was an unfair and unconscionable bargain for an inadequate price. But that is a question between assignor and assignee. It is unnecessary to consider what the decision ought to have been if this had been a litigation between the assignors and the assignee in which the former sought to repudiate the assignment. In the present case the assignors do nothing of the kind. They maintain and ask that effect be given to it, and for that purpose they join as Plaintiffs in the present actions. Their Lordships are therefore of opinion that the attack upon the title of the first Appellant upon any such grounds as those indicated must fail.

The second question that has to be considered is whether the Respondent has shown a good title, in himself by purchase from Jileb Koer the grandmother under the two sale deeds mentioned, and under such circumstances as to make that title effectual against the reversionary heirs.

The Subordinate Judge, who tried the cases held that the conveyances were not good but he allowed, in favour of the first Respondent, certain sums which he considered to have been advanced for purposes of legal necessity; and whilst giving a decree to the Appellants and Plaintiffs for possession of the property, he made that decree conditional upon the payment to that Respondent of the sums held to have been advanced for legitimate necessities. On the argument of these appeals

Mr. Cohen, for the Appellants, accepted the propriety of this mode of dealing with the case, and assented to the allowance so made by the Subordinate Judge.

The High Court, on appeal, differed from the first Court, and held that the necessity for the sales in question was established.

Before dealing further with this question, it must be noticed that the case now contended for is not the case raised on the pleadings and relied upon at the trial. The Respondent in his written statement alleged a title derived, not from Jileb Koer, but from Etraj Koer. He said, in paragraph 21 that "Etraj Koer was no heir to Narayan Saran Singh, and that she acquired an absolute right by adverse possession;" in paragraph 23 "that it is not true, as the Plaintiffs allege,..... that on the death of Narayan Saran Singh Jileb Koer succeeded as heir and was in possession up to her death," and in paragraph 25 that "Jileb Koer and Aprup Koer never took the estate of Narayan Saran Singh as heir, and the fact of their joining in the documents as person executing the deeds of sale and the prior deeds was a matter of form of evidence of members dependent for maintenance on Etraj Koer, and was merely a surplusage;" and it was added in paragraph 26 that "even if Jileb Koer were to have taken the estate.....by inheritance, she would take it in absolute state.....under the provisions of Mitakshara law, and so also if she was made a co-sharer by Etraj Koer in Etraj Koer's right." In his evidence given at the trial the Respondent endeavoured to maintain the case that his title was derived from Etraj Koer and was good on that account.

One who claims title under a conveyance from a woman, with the usual limited interest which a woman takes, and who seeks to enforce that title against reversioners, is always subject to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making, and also that that alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner.

P. C.

1908

Raja Rai Bhag-
wan Dayal Singh
and others.

Debi Dayal
Sahu and
others.

Sir Arthur
Wilson.

P. C.

1908

Raja Rai Bhag-
wat Dayal Singh
and others,

v.
Debi Dayal
Sahu and
others, ..

Sir Arthur
Wilson.

These considerations apply with special force to the present case. The earlier transactions of the first Respondent were with Etraj Koer, and there is no satisfactory evidence to show that Jileb Koer, the real owner took part in them, or authorised them in any way.

It was argued however that, if Jileb Koer was not shown to have authorised the earlier transactions, she had ratified them by being a party to the later documents and particularly the two sale deeds. Ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier. And this rule is recognised in sec. 196 of the Indian Contract Act. Looking to the substance of the matter, it would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could, by act *ex post facto*, charge upon the estate which she represents obligations not originally binding upon it.

With regard to the first of the sale deeds now in question, when the details which make up the consideration come to be examined, it appears that they include one sum of Rs. 1,500 which the Subordinate Judge credited to the first Respondent in the manner already explained. A part from this sum the great bulk of that consideration for this sale deed consists of debts originally incurred by Etraj Koer with accretions interests and compound interest. Their Lordships are of opinion that this deed was correctly estimated by the Subordinate Judge.

The case as to the second sale deed is not quite so simple. With regard to it the subordinate Judge gave credit to the first Respondent for considerable sums as having been advanced for real necessities. As to the rest of the consideration for that deed he held that necessity had not been established. In coming to this conclusion, he took into account not only the more general considerations already referred to but also certain circumstances peculiar to the case—that the lady who alone had any power to convey was old, and had no independent advice to guide her, and that the first Respondent was in a position to exercise considerable influence over her affairs. Their Lordships think the Subordinate Judge was justified in taking all these matters into his consideration;

and they see no sufficient ground for rejecting his conclusions.

There remains one other point for consideration, The Plaintiffs claimed not only possession but mesne profits. The Subordinate Judge rejected the latter claim. Their Lordships are of opinion that, as the deeds of sale are not good as such, the claim for mesne profits is wellfounded. In argument it was conceded that on the other side of the account interest at 6 per cent, should be allowed on the sums credited to the first Respondent. The amounts thus to be allowed on the one side, and on the other can be adjusted in execution proceedings.

Their Lordships will humbly advise His Majesty that the appeals should be allowed, that the decrees of the High Court should be discharged with costs to be paid as regards the first decree by the present Respondents other than Sowton and as regards the second decree by the first Respondent, that the decrees of the Court of the Subordinate judge should be discharged, and that instead thereof it should be ordered that upon the first Appellant paying to the first Respondent the sums found in favour of the latter by the subordinate Judge with interest at 6 per cent, per annum the first Appellant do recover possession of the property in suit together with mesne profits to be ascertained in execution proceedings and costs to be paid by the first party Defendants in the first suit and by the sole Defendant in the second suit.

The Respondents other than Sowton will pay the costs of these appeals.

Solicitors: *Messrs. Withal and Withal* for the appellants.

Solicitors: *Messrs. T. L. Wilson & Co*, for the Respondents other than Sowton.

appeals allowed.

[APPEAL FROM BENGAL.]

LORD MACNAGHTEN. LORD ATKINSON. SIR ANDREW SCOBLE.

SIR ARTHUR WILSON. 1908. 4, February.

CHHATRAPAT SINGH DUGAR, Appellant,

v.

MAHARAJ BAHADUR SINGH, and anr., Respondents.

Land Registration Act (VII B. C. of 1876)—Co-trustee application by, for registration—Refusal by the Revenue

P. C.

1908

Raji Rai Bhag-
wat Dayal Singh
and others,

v.

Debi Dayal
Sahu and
others.

Sir Arthur
Wilson.

P. C.

1908

4, February.

P. C.

1201

Chhatrapat
Singh Dugar,
v.
Maharaj Baha-
dur Singh.
and anr.,

authorities—Civil Court's authority to direct registration—suit, maintainability of—Declaration of right to possession.

Where Plaintiff's application for the registration of his name as a co-trustee, under the Land Registration Act was refused by the Revenue authorities,

Held—That a Civil Court is not competent to direct the action of the Revenue authorities under the Land Registration Act, and suit brought by the Plaintiff with the object of obtaining an order from the Court which would bring about a re-consideration of the order passed by the Revenue authorities so as to obtain the registration of the Plaintiff's name as a co-trustee is not maintainable.

Held, further, on the construction of a compromise decree on the basis of which the suit was brought, that the Plaintiff was not entitled to a declaration of his right to the possession of the trust property jointly with the Defendant—this order, however, not affecting the right of the Plaintiff or any one else to take action in the case of any malversation by the Defendant.

Appeal from a decree of the High Court of Judicature at Fort William in Bengal, dated 1st February 1904, reversing a decree of the Court of the Subordinate Judge of Dinajpur, dated 22nd December 1899, and dismissing the appellant's suit.

Mr. Ross for the appellant.

Mr. De Gruyther for the Respondents.

Their LORDSHIPS' JUDGMENT was delivered by

LORD MACNAGHTEN—Their Lordships do not think it necessary to call upon the Respondents. They concur in the reasons stated in the judgment of the High Court.

Their Lordships will humbly advise His Majesty that this appeal ought to be dismissed. The Appellant will pay the costs of it.

Solicitor *Mr. G. O. Farr* for the Appellant.

Solicitors: *Messrs. T. L. Wilson & Co.* for the Respondents.

Appeal dismissed with costs.

P. C.

1908

12, February.

[APPEAL FROM THE JUDICIAL COMMISSIONER,
HYDERABAD ASSIGNED DISTRICT.]

PRESENT:—*Lord Robertson, Lord Collins, Sir Arthur Wilson.*

PESTONJI JIVAJI AND OTHERS APPELLANTS,

v.

SHAPURJI EDULJI CHINYOY AND OTHERS RESPONDENTS.

Native State, location of British troops in—Power of cantonment authorities as to grant or user of land—Treaty, ab-

ence of—Power restricted to military purposes—Land belongs to State—Parsi Tower of Silence, grant of land for—Control of cantonment authorities.

P. G.

1908

Pestonji Jivanji
and others.Shapurji Edulji
Chinoy and
others.

The Hyderabad Subsidiary Force, which had its headquarters in the Secunderabad cantonment, was a force in the employment of the East India Company and commanded by the Company's officers, but maintained, by agreement, in Hyderabad territory for the protection of the Nizam. There never was in existence any treaty prescribing the limits of the powers of the Nizam's officers on the one hand, and the military commander commanding the Hyderabad Subsidiary Force on the other, with respect to the management, control, and disposition of the cantonment and the land comprised in it. When the Nizam's government admitted a British force within its territory, and allotted to it Secunderabad cantonment as its head quarters, it no doubt, by necessary implication, conveyed to the military authorities all powers of jurisdiction, control and management incident to maintaining efficiency and the discipline of the troops, the peace and good order and convenient use of the cantonment. But it would be going a long way beyond this to hold that the officer commanding the troops was empowered to alienate, in perpetuity, land forming part of the cantonment and undoubtedly Hyderabad territory for a purpose wholly unconnected with military requirements.

The Appellants, who were members of the 'Parsi' community, claimed that the founders of the Parsi Tower of Silence, which stands on a portion of certain land situated in the Secunderabad cantonment, were in their life time owners of the land in question, and that the property had devolved upon themselves as descendants, and representative in title, of the original founders. The respondents, who were also members of the Parsi community, contended that the land in question had been granted to the whole Parsi community for a public purpose, and to enure for the benefit of the community generally for all time by the cantonment authority. The most important document relied upon by the Appellants was issued by an officer of the Hyderabad State and purporting to express a transaction, by which the State had assented to the grant of the land in question to the founders, and directed possession of it to be delivered to them. Another document in evidence also obtained on behalf of the founders, through their agent purported to be issued by the authority of the Brigadier commanding the Hyderabad Subsidiary Force, and to certify that the Parsis of Secunderabad had permission to enclose the land in question, which was given for a tower to be built on it ;

Held—That the considerations set out above must be borne in mind in estimating the effect of the two documents ; that the first, emanating from the State purported to deal with, and enforce, a grant of the land to the founders by name, and the delivery of possession to them ; that the second document, emanating from the cantonment authorities, did not deal with title or possession, but gave permission to use the land, already conveyed, for the particular purpose of a Tower of Silence, and to enclose the land,

P. C.

1908

Pestonji Jivanji
and others,
v.
Shapurji Edulji
Chinoy and
others.

which were matters obviously within the discretion of the commanding officer, and that the effect of the two documents was to show a good title in the founders, and not in the Parsi community.

This was an appeal from a judgment and decree of the Court of the Judicial Commissioner, Hyderabad Assigned Districts, dated the 12th December 1901, which reversed a judgment and decree of the Court of the Superintendent Residency Bazars, Hyderabad, dated the 25th march 1901.

The principal question involved in the appeal was the title to a plot of land on which stands a Parsi Tower of Silence situate in the south-eastern corner of the Cantonment limits of Secunderabad

Mr. Jardine, K. C., and *Mr. DeGruyther* for the appellants.
Mr. Ross for the respondents

Their LORDSHIP'S JUDGMENT was delivered by

SIR ARTHUR WILSON.—The controversy out of which this appeal arises lies between various members of the Parsi community, and relates to certain land situated in the Secunderabad Cantonment on a portion of which stands a Parsi Tower of Silence.

In or about the year 1895 the Respondents, purporting to act on behalf of the Parsi community, resolved to erect on the land in question a second Tower of Silence in addition to that already there. The appellants objected to this proceeding, claiming as descendants in title, of the original founders.

Negotiations for a settlement having failed, the Appellants filed the present suit. They alleged that the founders were in their life-time the owners of the land in question, and that the property had devolved upon themselves, and they proceeded to complain of the Respondent's, encroachment

The Respondents, who were Defendants in the suit, asserted that the land had been granted to the whole Parsi community for a public purpose, and, to enure for the benefit of that community generally for all time, by the Cantonment Authority.

In the Courts in India the Defendants further set up, that, if the grant had been to the founders, the latter had subsequently dedicated the land to the purposes of the Parsi community generally. It was also contended that a title, good

against the founders and their representatives, had been acquired by adverse possession. On both those points the Court in India found against the Defendants, and their Lordships have not been asked to revise those findings. The sole question discussed on the argument of the appeal was that of the original title to the property.

The Judge who tried the case decided in favour of the plaintiffs, now Appellants, and granted an injunction. On appeal the Judicial Commissioner reversed the decision and dismissed the suit. Hence the present appeal.

The founders already mentioned, were two brothers, Parsis, Pestonji Meherji, and Vicaji Meherji, who in 1837 and afterwards carried on business as bankers at Hyderabad and in other places. It appears from the correspondents that, at about that time they had made up their minds to make Hyderabad their home, and they determined at the same time to establish a Tower of Silence; for which it was necessary both to obtain the ground on which the Tower could be built, and to establish the necessary priests for carrying on the services and ceremonies required by the Parsi religion.

It is clear that with regard to the establishment of priests everything was done by the brothers Pestonji and Vicaji. They found the proper persons, and arranged with them to come and settle at the spot to be selected. They undertook the responsibility for their salaries, though the priests were to be at liberty to receive fees for the performance of ceremonies from other Parsis.

Pestonji and Vicaji also, through their agent at Secunderabad, made all necessary arrangements for obtaining the site required. It is not necessary to examine all the contemporary papers in evidence. The most important document relied upon by the plaintiffs is the following:—

“ Ijat asar Balkishta Reddy, Mucaddum of the Village of Bholuckpore, in the District of Hoosain Sangar, may you be well, year 1248 Sal i. e. Fasli. The reason of writing this is that the Bankers Pestonji and Vicaji having applied and Government having sanctioned the grant to them of the Hill which is near Gattula Naganna Kunta in the Devini Bhavi Kancha within the boundary of the said village, for deposit-

P. C.

1901

Pestonji Jivanji
and others,v.
Shapurji Edulji
Chinoy and
other.—
Sir Arthur
Wilson.

P. C.

1908

Pestonji Jivanji
and others.Shapurji Edulji
Chinoy and
others.Sir Arthur
Wilson.

ing bones the talukdar Raja Rang Rao Bahadur has sent order and therefore it is hereby written that you deliver up the said Hill to the said Bankers Pestonji and Viccaji. Note that this is a peremptory order in this matter. The date the 25th Rabiul-awal 1254 (i. e. June 1838).

IBRAHIM KHAN, NAIB (In Persian).

Peith Mashirabad. "

This document was held by the Judge who tried the case to be a genuine document, a finding for which he assigned cogent reasons. The learned Judge who heard the case on appeal pointed out a variety of circumstances which, he thought, through suspicion upon the document. But he did not overrule the finding of the first Court that it was genuine. Their Lordships see no sufficient reason why they should reject that finding.

The next document of high importance is the following—

"This is to certify that the Parsis of Secunderabad have permission by order of Brigadier Wahab, C. B., Commanding Hyderabad Subsidiary Force to enclose the Hill by name Narmavunghutt for a Burying place, the circumference of which is about (18) eighteen hundred feet, and immediately adjoining the south end of Newganah's garden and near the public Bearer's line in rear of the Cantonment of Secunderabad.

"This Hill is given for a Tower only to be built on its summit.

"H. F. F. CONSIDINE,
Assistant Q. M. General,
Hyderabad Subsidiary Force.

"Assistant Q. M. General's Office,
Head-quarters Hyderabad
Subsidiary Force."

"Secunderabad, 15th January 1839."

That document was actually obtained on behalf of the two brothers through their agent, but it is the matter upon which the Respondents chiefly rest their case. Their contention is that that document formed the real root of title to the land in question and that by its terms the grant was one to the Parsi community, generally and not to the two brothers person-

ally. Before examining these two documents and their relation one to the other, it is well to consider the authority from which each document issued, and the relation of those authorities one to the other. The first of two documents clearly was issued by an officer of the Hyderabad State, and it purports to express a transaction, by which the State had assented to the grant of the land to the two brothers, and directed possession of it to be delivered to them. The second document purports to be issued by the authority of the Brigadier commanding the Hyderabad Subsidiary Force, a force which had its headquarters in the Secunderabad Cantonment,

The establishment of the Subsidiary Force, and its modification from time to time, may be collected from Aitchison's Treaties, Vol 8, at and after p. 264, and from the various treaties and agreements which follow. It was a force in the employment of the East India Company, and commanded by the Company's Officers but maintained, by agreement, in Hyderabad Territory for the protection of the Nizam.

The research of Counsel was unable to discover any treaty prescribing the limits of the powers of the Nizam's officers on the one hand, and the Military Commander on the other, with respect to the management, control, and disposition of the Cantonment and the land comprised in it. And it appears clear that no such treaty ever was in existence.

When the Nizam's Government admitted a British Force within its territory, and allotted to it the Secunderabad Cantonment as its Headquarters, it no doubt, by necessary implication, conveyed to the military authorities all powers of jurisdiction, control, and management incident to maintaining the efficiency and the discipline of the troops, and the peace and good order and convenient use of the Cantonment. But it would be going a long way beyond this to hold that the officer commanding the troops could be held empowered to alienate, in perpetuity, land forming part of the Cantonment, and undoubtedly Hyderabad territory, for a purpose wholly unconnected with military requirements. These considerations must be borne in mind in estimating the effect of the two documents which have been cited.

There appears to be no real difficulty in reconciling the two documents, and appreciating their effect. The first, emanating from the State, purports to deal with, and enforce, a grant of the land by the State to the two founders by name, and the delivery of possession to them. The second document,

P. C.

1901

Pestonji Jivanji
and others,v.
Shapurji Edulji
Chinoy and
other.Sir Arthur
Wilson.

P. C.

1908

Fentonji Jivanji
and others.v.
Shapurji Edulji
Chimoy and
others.—
Sir Arthur
Wilson.

emanating from the Cantonment Authorities, does not deal with title of possession, but gives permission to use the land, already conveyed, for the particular purpose of a Tower of Silence, and to enclose the land. This are matters obviously within the discretion of the commanding officer, for they might affect the convenient occupation of the Cantonment. The effect of the two documents is to show a good title in the founders, and not in the Parsi community.

What happened afterwards only confirms this view. The founders admittedly enclosed the land and erected a Tower of Silence upon it, at their own expense. About the same time, or shortly afterwards, they erected a Fire Temple upon land which they acquired by private purchase, and endowed it.

The evidence as to the possession, management, and control of the Tower of Silence and of the land on which it stood, shows these to have been in the founders. The only question being who were the original grantees, the events of the early years, after the acquisition of the land and the erection of the Tower, are much more important than those of later years, when the circumstances of the parties had somewhat changed. And in those early years we find, from the correspondence, that the priests referred such difficulties or questions as arose for the orders of the founders, and obeyed those orders.

The founders certainly, down to the year 1863, bore the whole expense of the establishment, and all costs of maintenance and repair. During those years the Parsi community were not represented by any Committee or other organization. Therefore during those years, the founders had no rivals in respect of possession and control; for the suggested possession and authority of the head priest is negatived by his own letters to the founders.

After 1863, the Parsi community from time to time subscribed money in aid of additions and improvements, and from 1882, onwards there was a committee representing, in some sense, the community. But what happened in these later years can throw but little light upon the nature of the grant of, or soon after, 1837.

Their Lordships are of opinion that the view of the case taken by the Judge who tried it was correct. They will humbly advise His Majesty that the decree of the Judicial Commissioner should be discharged with costs, and that of the Court of the Superintendent restored. The Respondents will pay the costs of this appeal.

Solicitors: *Messrs. Payn and Lattey* for the Appellants.

Solicitors: *Messrs. Lattey and Hart* for the Respondents.

Appeal allowed.

[APPEAL FROM BENGAL.]

LORD MACNAGHTEN. LORD ATKINSON. SIR ANDREW SCOBLE.

SIR ARTHUR WILSON. 1908. Heard, 5 & 11 February,
Judgment, 14, May.

P. C.

1908

14, May.

RADHA PROSAD MULLICK and anr. Appellants.

v.

RANIMONI DASSI and others, Respondents.

Hindu Law—Will—Construction—Bequest to "daughters and their respective sons"—Restriction of descent to male issues—Absolute or life-estate—Woman's estate—Survivorship between daughters—Spiritual benefit—Remainder over to sons—Gift over to daughters on failure of adoption—Succession Act (X of 1865), secs. 82, 116, 117.

In construing the Will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family, and it may be assumed that a Hindu knows that as a general rule at all events, women do not take absolute estates of inheritance which they are enabled to alienate.

Moulvie Mahomed Shumsool v. Shewukram L. R. 2 I. A. 7 (1874) followed.

In the Will of a Hindu drawn up in the English language and probably by an English Solicitor who was one of the attesting witnesses, it was provided in case of the failure of a prior bequest in favour of a son to be adopted to the testator (which bequest in fact failed) that the estate was to be made over to and divided between his two daughters in equal shares, "to whom and their respective sons he gave, devised and bequeathed the same." There was a proviso that in the event of one of the daughters dying without leaving any male issue surviving the share of the deceased daughter was to go to the surviving daughter and her sons—to the exclusion in both cases of female issue. Further, that "in the case of the death of either daughter leaving sons, the share of such daughter was to be paid to such her son or sons, share and share alike."

Held—That under the will the testator's daughters whom he incontestably intended to benefit were to have no more than what in generally known to be a woman's estate in his property.

That the testator intended to create in their favour an estate for life with a remainder over to their sons.

That in the events that happened the daughters were entitled to the testator's estate in equal shares for life and with the benefit of survivorship between themselves.

This was an appeal from appellate judgment and decree of the High Court at Calcutta, dated the 23rd of April 1906, which affirmed a judgment and decree of Mr. Justice Woodroffe, sitting on the Original Side of the said High Court and dated the 31st of July 1905.

Mr. De Gruyther for the Appellant.

P. O.

1908

Radha Prosad
Mullick and anr.v.
Ranimoni Dass
and others.

Sir R. Finlay, K. C., and Mr. K. Brown for the Respondents.

Mr. De Gruyther replied.

Their LORDSHIPS' JUDGMENT was delivered by

SIR ANDREW SCOBLE—Hurry Dass Dutt, a Hindu inhabitant of Calcutta, died on the 30th October 1875, leaving a Will which was admitted to probate by the High Court on the 20th December in the same year. The Will was in the English language, and was probably drawn by English solicitor, who is one of the attesting witnesses.

The only question raised upon this appeal is as to the nature of the estate which, in the events which have happened, the testator's daughters take under the terms of the Will.

The clause of the Will relating to the daughters is as follows:—

But in case none of such adopted sons survive my said wife, or in case of either surviving my said wife and dying under the said age without leaving a son or sons, I desire and direct my executors, after the death of my said wife, or the death of such son after her, but under the age of eighteen years without leaving a son or sons, to make over and divide the whole of my estate, both real and personal, unto and between my daughters in equal shares, to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter her surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons, share and share alike.

Woodroffe, J., by whom the case was heard in the first instance, held that the intention of the testator was "to benefit the adopted son, and should the provisions (of the Will) in this respect in any manner fail, then those who were of his own blood, viz., his daughters;" that the words "and their respective sons" are used as words of limitation and not of purchase; and that upon the true construction of the Will, the daughters were "each entitled to a moiety of the estate of the testator absolutely." He expressed no opinion, however, as to the right of the parties in the event of the death of one of the daughters leaving no natural son her surviving. Upon appeal to the High Court his judgment, upon these points, was confirmed.

With great respect for the learned Judges in the Courts below, their Lordships are unable to concur with their decision. This is the Will of a Hindu, and as observed by this Committee in the case of *Moulvie Mahomed Shumsool v. She-wukram*, L. R. 2 I. A. 7 at p. 14 (1874), "in construing the Will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate." In spite of the assistance of his English solicitor, it appears to their Lordships that in this case the testator has clearly succeeded in showing that his daughters, whom he incontestably intended to benefit, were not to have more than what is generally known to be a woman's estate in his property. This is established by the gift to them "and their respective sons," and by the proviso that in the event of the daughters dying "without leaving any male issue surviving," then the share of the deceased daughter is to go to the surviving daughter and her sons, to the exclusion in both cases of female issue. Moreover, "in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons, share and share alike." No language could more clearly show that the intention of the testator was to exclude his daughters' daughter from the succession, to which they will have been entitled under the ordinary Hindu law, if their mother's estate had been absolute; and the reason of this is obvious, as the sons of his daughters would be competent to offer funeral oblations to him, the strongest of all possible arguments to an orthodox Hindu.

The learned Counsel for the Respondents strongly relied on Sec. 82 of the Indian Succession Act, 1865, which provides that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him." As already pointed out, it is abundantly clear that, under the terms of the Will, only a restricted interest was intended to pass to a daughter dying without male issue.

P. C.

1908

 Radha Prosad
Mullick and anr.

 v.
Ranimoni Dassi
and others.

 Sir Andrew
Scoble.

P. C.

1908

Radha Paosad
Mullick and anr.v.
Ranimoni Dassi
and others,Sir Andrew
Scoble.

In the opinion of their Lordships, according to the true constructor of the Will, the intention of the testator was to create in favour of his daughters an estate for life with a remainder over to their sons, and the learned Judges of the High Court ought to have held that, in the events that have happened, the daughters of the testator, Ranimoni Dassi and Premmoni Dassi, are entitled to the testator's estate in equal shares for life and with benefit of survivorship between themselves. They will humbly advise His Majesty that this appeal ought to be allowed and the decree of the High Court varied in accordance with this judgment, and that in other respects the decree ought to be affirmed. Under the circumstances, the costs of the appeal taxed as between solicitor and client, must be paid out of the estate.

Solicitors: *Messrs. Watkins and Lempriere* for the Appellants.

Solicitors: *Messrs. T. L. Wilson & Co.* for the Respondents.

Appeal allowed :

Costs out of the estate.

THE BANK OF BOMBAY, APPELLANT,

v.

SULEMAN SOMJI, RESPONDENT.

[APPEAL FROM BOMBAY.]

P. C.

1908

2nd June.

PRESENT:—*Lord Macnaghten, Lord James of Hereford,
Lord Atkinson, Sir Arthur Scoble, Sir Arthur Wilson.*

Corporation—Bank of Bombay—Share-holders' register—Share-holder's right to inspect and take extracts—Special interest and definite object, necessary—Suit for declaration of right to inspect, in the nature of application for writ of mandamus—Conditions on which relief can be given.

A suit brought against the Bank of Bombay by a shareholder for a declaration that he is entitled to inspect the register of shareholders and to copy and take extracts from such register is, in its nature, though not in its form, somewhat of the character of an application for a writ of *mandamus*, and the principles regulating the issue of the prerogative writ should apply to a great extent to the granting of the relief prayed for in such a suit.

A writ of *mandamus* will not be allowed to issue unless the applicant shows clearly that he has the specific legal right to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other and that his claim has been refused.

When, therefore, before the suit, the Plaintiff claimed an absolute right to inspect and take extracts from the Bank's register of shareholders—to which he was not entitled—and was refused, but in the suit claimed a more qualified or restricted right,

Held—That the suit could not succeed.

The right to inspect the documents of a corporation which at common law belongs to every member of such corporation is not an absolute right, but is confined to cases where the member of the corporation has in view some definite right or object of his own and to those documents which would tend to illustrate such right or object.

Where it appeared that the Plaintiff had no special interest in any of the matters he complained of or any interest other than or different from that of each member of the corporation and had no definite right or object of his own to aid or serve in asking for inspection of the register or right or object which the register would illustrate, but his object was to obtain the inspection in order to communicate with the shareholders with the view of securing their help in bringing about an improvement in the administration of the corporation's affairs,

Held—That no relief could be granted to the Plaintiff.

REX V. MERCHANT TAYLORS CO, 2 B, and Ad. 115 (1831), followed.

This was an appeal from an Appellate decree of the High Court of Judicature at Bombay, dated the 22nd January 1907, which reversed a decree made on the 6th August 1906, by Mr. Justice Scott, sitting on the Original Side of the said High Court.

The principal question involved in the present appeal was whether a shareholder in the Bank of Bombay is entitled to inspect the register of shareholders kept by the said Bank.

Mr. Levett, K. C., and Mr. Frank Russell, K. C., for the Appellant.

Mr. DeGruyther, K. C., and Mr. Kyffin, for the Respondent.

Their LORDSHIPS' JUDGMENT was delivered by

LORD ATKINSON.—This is an appeal from a decree, dated the 22nd January 1907, pronounced by the High Court of Judicature at Bombay (sitting in appeal from its Original Civil Jurisdiction), by which a decree, dated the 6th August 1906, of the High Court (sitting in its Ordinary Civil Jurisdiction) was reversed and set aside. By this latter decree the Respondent's action was dismissed with costs.

The Respondent is a holder of one share in the Appellant Company, the Bank of Bombay, one of the Banks incorpora-

B. C.

1908

The Bank of
Bombay

v.

Suleman Somji.

P.O.

1908

The Bank of
Bombayv.
Suleman Somji.

Lerd Atkinson.

ted in 1876 by the Indian Statute of that year entitled the Presidency Banks Act, 1876.

It was suggested that the Respondent purchased this share for the purpose of causing annoyance to the Bank owing to the fact that some other litigation to which he was a party had been instituted against the Bank and was still pending. There was no satisfactory evidence given to sustain this allegation.

From the correspondence which took place between the Respondent and the Bank before the institution of this suit, it is, in the opinion of their Lordships, perfectly plain that the Respondent claimed a right to inspect the register of the shareholders of the Bank, and to be supplied with a list of such shareholders, as absolute and unqualified as is that conferred on the shareholders of joint stock companies in this country by sec. 32 of the Companies Act, 1862, or in India by section 31 of the Indian Companies Act, 1866, and sec. 55 of the Indian Companies Act, 1882.

It must be taken that the Appellants refused to recognize this absolute and unqualified right, or to comply with the claim based upon it, but in their letter of the 21st June 1906, which conveyed this refusal, they informed the Respondent that they would be pleased to furnish him with the list he asked for if he would satisfy them that he required it for use in his own interests as a shareholder. It is, therefore, clear that, before action brought, the qualified and restricted right to inspect and take extracts from the register contended for in argument on behalf of the Respondent was never asserted, nor any limited demand based upon it ever made or refused.

In the statement of claim the Respondent, for the first time, endeavoured explicitly to base his right and title to inspect, copy, and take extracts from, the register on some definite matters in which he himself was interested. He alleges therein that he had observed irregularities in the management of the Bank, in the election of its board of directors, in the advancing of large sums of money to its directors, and in other matters, and that he desired an inspection of the register to enable him to communicate with the other shareholders and, if possible, obtain their assent to certain resolutions

for the better management of the affairs of the Bank and the removal of some of the directors, which he intended to propose at the general meeting of the shareholders to take place on the 9th August 1906. But though this is the purpose for which, he claimed the right to inspect, copy, and take extracts from the register, the decree of the Court of Appeal contains no restriction whatever. It is couched in the widest terms. It ignores both the occasion and the purpose, and declares expressly that the Respondent, as long as he is a shareholder of the Bank, is entitled at all reasonable times to inspect the register of shareholders of the Bank, and to copy and take extracts from the said register, and it then proceeds to order that the Bank do give such inspection, and do allow the Respondent, as long as he is a shareholder of the Bank, to take copies of and extracts from the register, and then restrains the Bank from preventing the Respondent, as long as he is a shareholder of the Bank, from having access at all reasonable times to the register for the purpose of inspection and perusal, and from preventing the Respondent, as long as he is a shareholder of the Bank, from taking copies of and extracts from the register.

This suit is in truth in its nature, though not in its form, somewhat of the character of an application for a writ of *mandamus*, and the principles regulating the issue of that prerogative writ should, their Lordships think, apply to a great extent to the granting of the relief prayed for in such a suit as this. One of these principles is this, that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other, and that his claim has been refused. Nothing less, therefore, than the absolute right claimed by the Respondent in the correspondence above referred to could justify the decree appealed from in its present and unrestricted form. Now by sec. 241 of the above-mentioned Indian Act of 1866 and sec. 256 of the above-mentioned Act of 1882, the Appellant Bank is expressly exempted from the operation of each of those statutes.

There is no statute conferring on the members of this corporation a right to inspect, copy, or take extracts from the register of its shareholders or any other document belonging

P. C.

1906

The Bank of
Bombay

v.

Suleman Somji.

Lord Atkinson

P. C.

1908

The Bank of
Bombay

v.

Suleman Somji.

Lord Atkinson.

to it. The only right the Respondent can have, therefore, against the Bank in reference to such matters, is that which at common law belongs to every member of a corporation. Their Lordships have been referred to several authorities in which the nature, extent and measure of this right is explained and defined (*Rex v. The Proprietors of the Wilts and Berks Canal Navigation Reg. v. Lewisham Union*). The learned Judges in the Bombay Court of Appeal have referred to others. The result of the authorities is summed up in their Lordships' view correctly in "Taylor on Evidence," Vol. 2, para. 1495 (10th edition, 1906) in the words following:—

"On the application of a member the King's Bench Division will, in general, grant a rule for a *limited inspection* of the documents of the corporation, if it be shown that inspection is requisite with reference either to an action then instituted or at least to some specific dispute or question depending in which the applicant is interested; but, even in this case, the inspection will be granted to such an extent only as may be necessary for the particular occasion. The rule was formerly sometimes laid down more broadly, and the language ascribed to the Court in one or two cases might almost lead to the inference that members of a corporation have an absolute right, whenever they think fit, to inspect all papers belonging to the aggregate body. But any such doctrine is now exploded; and the privilege of inspection is now confined to cases where the member of the corporation has in view some definite right or object of his own, and to those documents which would tend to illustrate such right or object."

The strictness with which these limitations on the general and unqualified right of inspection are insisted on may be aptly illustrated by the case of *Rex v. Merchant Taylors Co.* 2 B. & Ad. 115 (1831). In that case certain members of a corporation claimed the right to inspect all the documents belonging to that body on the grounds (1) that they had heard and believed the revenues of the corporation were misapplied through the malpractices of those who managed the corporation's affairs; (2) that the fines for admitting freemen and liverymen to the corporation had been unnecessarily and improperly raised; (3) that lavish expenditure had taken place (in some instances to the applicants' own

knowledge) without the consent of the majority of the members of the corporation; (4) that a clerk of the corporation had, as the applicants had heard and believed, recently misappropriated funds of the company to a large amount; but that no accounts or information had been laid before the freemen or liverymen by which they could have ascertained the amount of the defalcations; and that they (the applicants) could not ascertain, unless they were allowed to look at the documents mentioned, whether the corporate funds had been properly applied and accounted for or not.

Every member of the corporation in this case obviously had an interest in each of the matters mentioned but none of the applicants had in any of them any special interest different from that of his fellow members, nor had they any definite purpose, or object, in obtaining the inspection asked for other than (in the words of Littledale, J.) to see "if by possibility the company's affairs may be better administered than they think they are at present." And the writ of *mandamus* was accordingly refused in this case.

At the trial no witness other than the Respondent was produced, and he was only tendered for cross-examination. He stated that he had heard through brokers that the Bank had advanced 6 lacs of rupees to three persons whom he named; that at elections the directors transferred shares to nominees who voted for them (a practice not itself illegal); that there were now only seven directors, instead of the maximum nine; that he intended to bring in two respectable people, and that he had in the correspondence given his reasons for asking inspection. It is clear on this evidence that the Respondent had no special interest in any of the matters he complained of, or any interest other than, or different from, that of each member of the corporation, and that he had no definite right or object of his own to aid or serve in asking for inspection of the register, or right or object which the register would illustrate; but that, on the contrary, his object was similar to that of the applicants in *Rex v. The Merchant Taylors Co*, 2 B. and Ad. 115 (1831), namely, to obtain the inspection in order to communicate with the shareholders with the view of securing their help in bringing about an improvement in the administration of the corporation's affairs,

P. C.

1908

The Bank of
Bombay

v.

Suleman Som i.

Lord Atkin son.

P. C.

1908

The Bank of
Bombay

v.

Suleman Somji.

Lord Atkinson.

Their Lordships think that, on this point the case is covered by the authority of *Rex v. The Merchant Taylors Co.*, 2 B. and Ad. 115 (1831), that the Respondent is not in law entitled to the extended right to which the decree declares him to be entitled, that the limited and qualified right contended for at the trial was never put forward, or insisted on, before action brought, or any claim based upon it ever refused, and they are, therefore, of opinion that the decree appealed from is erroneous and should be reversed with costs, and the judgment and order of Mr. Justice Scott restored. They will humbly advise His Majesty accordingly. The Respondent must pay the costs of this appeal.

Solicitors: *Messrs Cameron, Kemm and Co.*, for the Appellant.

Solicitors: *Messrs. Payne & Lattey* for the Respondent.

[APPEAL FROM BENGAL.]

Lord Macnaghten, Lord James of Hereford, Lord Atkinson.

Sir Arthur Scoble, Sir Arthur Wilson

DEBENDRA NATHDUTT, Defendant, Appellant,

v.

THE ADMINISTRATOR-GENERAL OF BENGAL

and others, Plaintiffs, Respondents.

Administration bond—Sureties' liability—Letters of administration, obtained by fraud—Effect—Misappropriation by grantees—Sureties not parties to fraud—Revocation of grant.

Although letters of administration have been obtained by fraud, so long as the grant remains unrevoked, the grantee to all intents and purposes remains the administrator, and he alone represents the estate, and his receipts are valid discharges for all monies received by him as administrator.

For his acts and defaults as administrator, his sureties, though themselves not parties to the fraud or cognisant of it, are liable.

This was an appeal by the Defendant, Debendra Nath Dutt, from a decree of the High Court of Judicature at Fort William in Bengal (Appellate Jurisdiction) dated the 23rd March 1906, affirming a decree, dated the 29th March 1905, of Sale, J., of the same Court sitting on the Original Side of the said Court.

P. C.

1908

3 June

Lord Robert Cecil, K. C. (with him *Mr. Boydell Houghton* for the Appellant.)

Mr. Simon, K. C. (with him *Mr. Sargent*) for the Respondent.

Their LORDSHIPS' JUDEMENT was delivered by

LORD MACNAGHTEN.—This is an appeal from the High Court of Judicature at Fort William in Bengal.

The Appellant, Debendra Nath Dutt, was one of two sureties in a bond conditioned for the due administration by Earnest Hardwicke Cowie, a solicitor in Calcutta, of the estate of a retired Indian civil servant named Craster. Mr. Craster died in England in August 1898, leaving a Will which was duly proved here in the following month of October. Part of the deceased's estate consisted of shares in the Bank of Bengal and other Indian assets. The Indian assets escaped the notice of the executors and remained unclaimed and outstanding. On the 29th of July 1902, Cowie, who is stated in the printed cases to have been one of the solicitors to the Government, and who certainly was then in good credit, obtained an order for the grant of letters of administration to himself as attorney for a fictitious person represented by him to be the only son and sole next-of-kin of the deceased, who had, as he pretended, died intestate. The letters of administration were issued on the 15th of August 1902, on the production of a bond in the usual form executed by Cowie and the two sureties, who received a small payment for their services, but were not themselves parties to the fraud or cognizant of it. By these means Cowie obtained possession of the bank shares, sold them in the market, and converted the proceeds to his own use. The fraud was not discovered till the end of 1903 or the beginning of 1904. Cowie then absconded. He was apprehended, tried, and convicted. The grant of administration in his favour was cancelled, and in May 1904 letters of administration with a copy of the Will annexed were granted to the Administrator General of Bengal. The bond of the 15th of August 1902 was then assigned to the Administrator General, and he brought this suit against Cowie and Cowie's sureties. Cowie made no defence. The suit was heard by Sale, J. That learned Judge pronounced a decree in favour of the Administrator General, the result of

P. C.

1908

Debendra Nath
Dutt

v.

The Administrator-General
of Bengal.

P. C.

1908

Debendra Nath
Duttv.
The Administrator-General
of Bengal.Lord
Macnaghten.

which, so far as regards the sureties, was that they were ordered to pay to the Administrator a sum equal to the amount of the proceeds of the bank shares misappropriated by Cowie together with interest and costs. Both the sureties appealed to the High Court. But that Court in its Appellate Jurisdiction by a majority affirmed the order of Sale, J. and dismissed the appeal with costs.

The case of the Appellant Dutt, who alone has appealed to His Majesty, as presented to this Board was that the letters of administration granted to Cowie, having been annulled by the Court on the ground of fraud, must be regarded as a mere nullity from the beginning: that Cowie, therefore, never was Administrator and that the bond, so far as the sureties were concerned, was void and of no effect; for the sureties undertook to be responsible for a real Administrator, not for a person assuming to act in a capacity which he never possessed and which the Court could not have conferred upon him. The case was argued very ably by the learned counsel for the Appellant who said everything that could be said on his behalf. But there is really no substance in the Appellant's contention. So long as the letters of administration granted to Cowie remained unrevoked, Cowie, although a rogue and an impostor, was to all intents and purposes Administrator. He, and he alone, represented the deceased in India. His receipts were valid discharges for all moneys received by him as Administrator. As Administrator he collected the assets belonging to the deceased in India, and he misappropriated the assets which he so collected. For his acts and defaults as Administrator the Appellant and his co-surety became and must remain responsible.

Their Lordships are therefore of opinion that Maclean, C. J. and the learned Judges who concurred with him were perfectly right, and they will humbly advise His Majesty that the appeal must be dismissed.

The Appellant will pay the costs of the appeal.

Solicitors: *Messrs. Vallance & Vallance* for the Appellant.

Solicitors: *Messrs. Wade & Lyall* for the Respondents.

J. H. W. A.

Appeal dismissed.

(APPEAL FROM PUNJAB.)

P. C.

1908

HANSRAJ and others,—(PLAINTIFFS),—APPELLANTS,

versus,

SUNDARLAL and another,—(DEFENDANTS)—RESPONDENTS.

AND

HANSRAJ and another,—(PLAINTIFFS)—APPELLANTS,

versus.DWARAKADAS and another,—(DEFENDANTS),— SECRETARY
OF STATE FOR INDIA,—(INTERVENANT),—RESPONDENTS.*Present*:—LORD MACNAGHTEN, LORD ATKINSON,

SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

Appeal—Arbitration—Finality of decrees passed in accordance with award—Disposal of objections to the validity of award by 1st Court—Appeal to the Privy Council against the decrees of Governor-General's Agent in Bhopal, Native State—Special Leave to appeal—Civil Procedure Code Act XIV of 1882, section 522.

Held, that when objections to the validity of an award by arbitration have been disposed of, whether rightly or wrongly, by the Court of 1st instance and a decree in accordance therewith has been passed, the decree becomes final and is not open to appeal on the strength of those objections.

Quere:—Whether a decree by the Agent to the Governor-General, Central India, lies to the Privy Council.

The material facts of the case are sufficiently given in the following judgment of their Lordships delivered by Lord Macnaghten on 18th March, 1908.

Lord Macnaghten.—The parties to these two appeals or their predecessors in title have been in litigation now for more than 20 years. The subject of litigation is the property of a joint Hindu family engaged in business, with branches in different parts of the country. Part of the family property is situated in British India; part in Native States. The litigation was begun in 1886 in the Court of the Political Agent at Sehore, in Bhopal by a suit for partition of so much of the family property as was within his jurisdiction. The next proceeding was a suit for partition, commenced in 1888, in the Court of the District Judge of Karnal, in the Punjab.

In August 1897, after prolonged litigation, the parties to the Punjab suit nominated Mr. S. Clifford, Divisional Judge of Delhi, sole arbitrator to decide the matters in dispute in the suit.

P. C.

1908

Hansraj and anr.

v.

Sundar Lal,
Dwarka Das,
Secretary of
State for India
and others.Lord
Macnaghten.

The arbitrator was to determine what joint property, moveable and immoveable, except the immoveable property outside British India, was to be partitioned between the parties. The appointment of Mr. Cliford was duly confirmed by the Court.

The arbitrator finally submitted his award on June 29th 1900.

The appellants filed a great number of objections to the award. These objections were considered and disposed of by the District Judge of Delhi, who passed a decree in accordance with the award.

The objections filed by the appellants were all more or less frivolous. In some the arbitrator was charged with misconduct, but, on the face of the objections, it is perfectly clear that there was no misconduct within the meaning of that expression in the chapter on arbitration in the Civil Procedure Code, nor anything that could justify the Court in setting aside or remitting the award.

From the decree of the District Judge, the appellants appealed to the Chief Court of the Punjab.

The Chief Court dismissed the appeal on the ground that the appeal was incompetent, inasmuch as it did not appear that the decree was in excess of, or not in accordance with, the award.

In the meantime the Political Agent in Bhopal had made a decree in accordance with Mr. Clifford's award. There was an appeal to the Court of the Agent to the Governor General in Central India, but the appeal was dismissed. Special leave to appeal against the order of the Agent to the Governor General was granted by this Board on the representation that there was or might be an important question as to the jurisdiction of the Court of the Political Agent. And liberty was reserved to the Secretary of State for India in Council to intervene in his official capacity, Mr. Cohen, who appeared for the Secretary of State, not admitting that an appeal would lie to His Majesty in Council from the order of the Agent to the Governor-General in India, intimated that the Court of the Political Agent in Bhopal would be guided by the decision of the Chief Court of the Punjab if His Majesty thought fit to affirm that decision.

In their Lordships opinion the decision of the Chief Court is perfectly right. Their Lordships will therefore humbly advise his Majesty that both appeals should be dismissed.

The appellants will pay the costs of the appeals other than the costs of the intervenant.

[APPEAL FROM MADRAS.]

P. C.

1908

PRESENT: Lord Robertson. Lord Atkinson. Lord Collins

Sir Andrew Scooble. and Sir Arthur Wilson.

SANKARALINGA NADAN and ors.,

v.

RAJA RAJESWARA DORAI *alias*.

MUTTURAMLINGA DORAI and ors.

Worship, right to exclusive—Temple of shiva in southern India—Right of Shanars or Nadars to worship—Custom—Trustee surrendering decree on appeal—Power of Court to join beneficiaries as co-Plaintiffs—Compromise, unlawful—Civil Procedure Code (Act XIV of 1882), secs. 375, 437—Breach of trust—Introducing new worshippers contrary to usage.

Where it was proved that men of the "Shanar" or "Nadar" caste were by custom not allowed to worship in a temple dedicated to Shiva in which the customary ceremonies of Hindu worship were carried on,

Held—That arguments directed against the soundness of the doctrine as to the exclusion of the Nadars and showing inconsistencies in the treatment of the Nadars by the worshippers at the temple in other respects were of no avail and could not be entertained.

Where the hereditary trustee of the temple, after a decree had been made in his favour as representing the worshippers at the temple and pending an appeal by the "shanars," sought to enter into a compromise with them by admitting their right to worship in the temple contrary to the decision of the Court, and it was alleged and not disproved that he did so for corrupt motive.

Held—That the Appellate Court very properly reinforced the cause of the worshippers of the temple by joining certain new Plaintiffs.

The principles applicable to the case of a trustee who betrays his trust by surrendering a decree were well stated and applied by the High Court:

In all cases where the Court sees that the trustees are wholly uninterested in the matter and there are parties who are materially interested in the question, it never makes a decree in the absence of those parties who are alone interested in the contest;

CLERG v. ROWLAND L. R. 3 Eq. 368, 373 (1866) followed.

It is the duty of the trustee to maintain the customary usage of the institution, and if he fails to do so he is "guilty of a breach of trust and still more so, if he deliberately attempts to effect a vital change of usage and to make it binding on the worshippers by obtaining a decree of the Court to establish it.

ATTORNEY GENERAL v. PEARSON 3 Meridale 353; 17 Revised Reports 101 (1817) followed.

P. C.

1908

Sankaralinga
Nadan and ora.
v.
Raja Rajeswara
Dorai alias Mut-
turamlinga
and ora.

This was an appeal from a decree of the High Court of Judicature at Madras, dated the 14th February 1901, which affirmed a decree of the court of the subordinate Judge of Madura (East) dated the 20th July 1899.

The principal question involved in the present appeal was whether the Appellants and other persons of the caste to which they belonged were prohibited from entering into and worshipping at the Hindu temple of Meenatchi Sundereswara, situate in the town of Kamudi.

Mr. De Gruyther for the Appellants.

Sir Robert Finlay K. C., and *Mr. Kenworthy Brown* for the Respondents were not called upon.

Their Lordships said they would advise His Majesty to dismiss the appeal and give their reasons on a subsequent date.

Their LORDSHIPS' JUDGMENT was delivered by

LORD ROBERTSON—The question between the parties is whether the Appellants and the caste to which they belong have legal right to enter and worship in a temple at Kamudi. This temple is dedicated to the worship of Shiva, and the customary ceremonies of Hindu worship are there carried on. It is common ground between the disputants that the Appellants represent a caste called the Nadar or Shanar caste. It is alleged by the Respondents that the presence of persons belonging to the Appellants' caste is repugnant to the religious of the Hindu worship of Shiva and to the sentiments of the caste of Hindus who worship in this temple, and that it is contrary to custom in this temple. Both Courts in India have decided against the appellants, the judgment of the Subordinate Judge discussing the question in great detail and with much research, and the High Court at Madras resting their decision upon extremely comprehensible and cogent grounds.

The controversy touches but does not involve, delicate and abstruse questions of Hindu religious doctrine. In the view of their Lordships, it admits of decision upon a much

more palpable and limited range of facts.

First of all, the Appellants, as matter of fact, worship by themselves in a temple of their own. Second, the result of the evidence is a complete failure to prove any resort by persons of the Appellants' caste to the temple in dispute. Those two facts not merely negative the case of the Appellants that they "have been from time immemorial participating in the pooja and worship" in the disputed temple, but they make easy the Respondents' further contention that this separation in worship between the two classes was not accidental or voluntary, but rested on a deeper ground.

The evidence has been admirably analysed by the High Court and their appreciation of the quality of the evidence, on the one side and on the other, concurring as it does with that of the Subordinate Judge, is entitled to the greatest weight.

The argument addressed to their Lordships was directed rather against the soundness of the doctrine asserted by the Respondents as involving the exclusion of Nadars, and it was endeavoured to show that there were inconsistencies in the Respondents' treatment of the Appellants in other respects. All this, however, as matter of theological argument, is too rationalistic: while, on the other hand, it wanders from the region of fact and custom. What the Respondents have succeeded in proving is that by custom the appellants are not among the people for whose worship this particular temple exists.

Their Lordships have spoken of "the Respondents," generally; but it is necessary to note the episode in the proceedings euphemistically described as "the compromise." The original Plaintiff in the suit was the Rajah who was the hereditary trustee of this temple, which was the temple of one of the village in his zemindari. After the case had been decided in his favour by the Subordinate Judge, this person thought fit to profess that he now saw that he and the judge were wrong; and he asked that the judgment should be altered, so as to defeat his own action. A very shrewd motive for this surrender was specially asserted and has not been disproved. The Court, on being applied to, very properly reinforced the cause of the worshippers of the temple by joining certain new Plaintiffs to the original Pla-

P. C.

1908

Sankaralinga
Nadan and ors.
v.
Raja Rajeswara
Dorai alias Mut-
turamalinga
Dorai and ors.
Lord Robertson

P. O.

1908

Senkaralinga
Nadan and ora.
v.
Raja Rajeswara
Dorai alias Mut-
tusanlinga
Dorai and ora.
Lord Robertson.

ntiff (whose confidence in the justice of his suit had by this time convalesced). The principles applicable to the case of a trustee who thus betrays his trust by surrendering a decree have been well stated and applied by the High Court.

For these reasons their Lordships, on the 16th June last, agreed humbly to advise His Majesty that the appeal ought to be dismissed, and order the Appellants to pay the costs of appeal.

Solicitors: *Mr. Douglas Grant* for the Appellants.

Solicitors: *Messrs. Chapman-Walker & Shepherd* for the Respondents. *Appeal dismissed.*



[APPEAL FROM THE JUDICIAL COMMISSIONER OF OUDH.]

PRESENT:—*Lord Robertson, Lord Atkinson, Lord Collins, Sir Andrew Scoble, Sir Arthur Wilson.*

PANDIT GAYA PARSHAD TEWARI, APPELLANT,

v.

SARDAR BHAGAT SINGH and another, RESPONDENTS.

Malicious prosecution, suit for—Information to police—Prosecution by police, instigated and conducted by private individual—Real prosecutor liable—Question of fact—Malice.

A suit for damages for malicious prosecution may lie against a person who makes a false report which results in a prosecution or who instigates the police to send persons up for trial or who conducts the case against those persons when sent up for trial.

The question in all cases of this kind must be—who was the prosecutor? And the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion. The conduct of the complainant before and after making the charge must be taken into consideration. Nor is it enough to say that the prosecution was instituted and conducted by the police.

Whether or not in any case, the prosecution was instituted and conducted by the police in a question of fact.

The foundation of the action is malice and malice may be shown at any time in the course of the inquiry.

If a complainant does not go beyond giving what he believes to be correct information to the police, and the police, without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the nature of the prosecution.

This was an appeal from a decree of W. F. Wells, Esq., of the Court of the Judicial Commissioner of Oudh, dated the 14th December 1905, which reversed a decree of the Court of S. Ahmad Husain Esq., Subordinate Judge of Bahraich, dated the 31st July 1905,

The principal question involved in the appeal was whether, on the facts found, the Respondents were liable in law to an action for damages for malicious prosecution.

Mr. Leslie DeGruyther, K. C., for the Appellant.

No one appeared for the Respondents.

THEIR LORDSHIPS' JUDGMENT was delivered by

P. C.
1908

P. C.

1908

Pandit Gaya
Parshad Tewari.v.
Sardar Bhagat
Singh and anr.Sir Andrew
Scoble.

Sir Andrew Scoble.—This is an action for damages for malicious prosecution. The parties are officials of adjoining estates, the Plaintiff being manager of the Rampur Mathura estate, and the Defendants being respectively Munsarim and Kanungo of the Boundi division of the Kapurthala estate. The case arose out of a dispute regarding the ownership of some alluvial land lying between the estates; and the charge was that the Plaintiff had taken part in a riot connected with this dispute. The case was sent for trial on the 22nd November 1902, but was not disposed of until the 15th July 1903, when the Magistrate dismissed it, holding that "there was no riot at all," and adding:—

"I consider Kapurthala estate entirely to blame in this case, and hold that Sardar Bhagat Singh (assisted by Imam-ud-din Shah) is responsible for concocting up these riot and theft cases with all the minor complainants."

* The Plaintiff thereupon brought this action, claiming Rs. 7,000 damages. The Subordinate Judge held that "it was found during the trial of the criminal proceedings, and proved before me by the evidence in the case, that the two defendants have concocted and produced false evidence to get the plaintiff charged with the crime," and he gave the Plaintiff a decree for Rs. 6,082-8-0 damages and the costs of the suit. The Judicial Commissioner on appeal, on the authority of *Narasinga Row v. Muthaya Pillai*, I. L. R. 26 Mad. 362, (1902), dismissed the suit, holding that "if the police or magistracy decide to act on information given by a private individual without a formal complaint or application for process, the Crown becomes the prosecutor and not the individual," but he added:—

"I may say that, having studied the documentary evidence to which my attention was drawn, and read most of the voluminous oral evidence recorded by the Subordinate Judge, I am disposed to believe [that the Sub-Inspector did institute a charge under s. 147 at the instigation of Bhagat Singh and not of his own motion, that the charge was found false by the Magistrate who tried the case; and that the evidence on the record produced by the Appellants is not such as to incline me to believe it to have been proved."

It will be convenient to refer at once to the decision of the Madras High Court (*ubi subra*) which the learned Judicial Commissioner appears to have followed with some reluctance. The judgment is in these terms:—

" The only person who can be sued in an action for malicious prosecution is the person who prosecutes. In this case, though the first Defendant may have instituted criminal proceedings before the police, he certainly did not prosecute the plaintiff. He merely gave information to the police, and the police, after investigation, appear to have thought fit to prosecute the Plaintiff. The defendant is not responsible for their act, and no action lies against him for malicious prosecution. "

The principle here laid down is sound enough if properly understood, and its application to the particular case was no doubt justified; but in the opinion of their Lordships, it is not of universal application. In India the police have special powers in regard to the investigation of criminal charges, and it depends very much on the result of their investigation whether or not further proceedings are taken against the person accused. If, therefore, a complainant does not go beyond giving what he believes to be correct information to the police, and the police, without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But if the charge is false to the knowledge of the complainant; if he misleads the police by bringing suborned witnesses to support it; if he influences the police to assist him in sending an innocent man for trial before the magistrate—it would be equally improper to allow him to escape liability because the prosecution has not, technically, been conducted by him. The question in all cases of this kind must be—Who was the prosecutor? and the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion; the conduct of the complainant, before and after making the charge, must also be taken consideration. Nor is it enough to say, the prosecution was instituted and conducted by the police. That again is a question of fact. Theoretically all prosecutions are conducted in the name

P. C.

1908

Pandit Gaya
Parahad Tewari,

v.

Sardar Bhagat
Singh and anr,Sir Andsew
Seoble.

P. C.

1908.

Pandit Gaya
Parsad Tewari.v.
Sardar Bhagat
Singh and anr.Sir Andrew
Scoble.

and on behalf of the Crown, but in practice this duty is often left in the hands of the person immediately aggrieved by the offence, who *pro hac vice* represents the Crown. In India, a private person may be allowed to conduct a prosecution under sec. 495 of the Criminal Procedure Code, which provides that "any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police.....

.....any person conducting the prosecution any do so personally or by a pleader." When this is permitted, it is obviously an element to be taken into consideration in judging who is the prosecutor and what are his means of information and motives. The foundation of the action is malice, and malice may be shown at any time in the course of the enquiry. As Bramwell, B., observes in *Fitz John v. Mackinder* 9 C. B., N. S. 505 at p. 522 (1861).—

"This Action is not for damages, in respect of the preferring of the indictment only, but also for the residue of the prosecution, and the damage consequent upon it. * * * Where an action is maintainable in respect of the whole prosecution, including the preferring of the bill, it is in part maintainable for the subsequent stages and conduct of it."

And in the same case, Cockburn C. J., says (at p. 581);

"A prosecution, though in the outset not malicious, as having been undertaken at the dictation of a Judge or Magistrate, or, if spontaneously undertaken, from having been commenced under a *bona fide* belief in the guilt of the accused may nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired positive knowledge of the innocence of the accused, perseveres *malo animo* in the prosecution, with the intention of procuring *per nefas* a conviction of the accused."

Turning to the facts of the present case, it appears that on the 2nd November 1902 an application was made to the Deputy Collector of Bahraich for an investigation by the police of a charge of unlawful assembly against eight persons of whom the Plaintiff was not one. The investigation was entrusted to Izhar-ul-haq, a Sub-Inspector of Police, who says:

"I summoned the Plaintiff because Bhagat Singh gave me a list of accused persons containing Plaintiff's name. * * * When Bhagat Singh produced that list, I said to him that the complaint filed in Court did not contain Gaya Parshad's name. How was it that the Defendant had mentioned his name * * ? and then Bhagat Singh said that the chief cause of riot was the Plaintiff; so he gave the Plaintiff's name in the list, and that he would be summoned."

This makes it clear that Bhagat Singh was directly responsible for any charge at all being made against the Plaintiff. Imam-ul-din was the person who made the original report of an unlawful assembly upon which the prosecution for riot was ultimately based, and the two men appear to have acted together throughout the subsequent proceedings. They took the principal part in the conduct of the case both before the police and in the Magistrate's Court; and the learned Counsel who appeared for the prosecution at the trial before the Magistrate expressly says that they instructed him that Gaya Parshad "joined the riot." As already mentioned, the Magistrate found that there was no riot at all, and that on the day on which it was alleged to have occurred, the appellant was ill at Lucknow. The charge was a false one to the knowledge of the Respondents, and they must abide the consequences of their misconduct.

In granting leave to appeal to His Majesty in Council, the learned Judicial Commissioners say:

"It is difficult to overestimate the importance of the question raised in this case, namely, whether a person may be sued for damages for malicious prosecution who makes a false report which results in a prosecution, or who instigates the police to send persons up for trial under sec. 170 of the Code of Criminal Procedure, or who conducts the case against these persons when set up for trial."

And they add:—

"All these are circumstances which occur perhaps daily in every district in India, and having regard to the immense number of false charges made, (we) think it most desirable that there should be no doubt as to the law on the subject."

In the opinion of their Lordships, it would be a scandal

P. O.

1908

Pandit Gaya
Parshad Tewari.

v.
Sardar Bhagat
Sing and anr.

Sir Andrew
Scoble.

P. C.

1901

Pendit Gaya
Parshad Tewari.v.
Sardar Bhagat
Singh and anr.Sir Andrew
Scoble,

if the remedy provided by this form of action were not available to innocent persons aggrieved by such unfounded charges and they will humbly advise His Majesty that the appeal ought to be allowed and the decree of the Judicial Commissioner set aside, with costs, and that of the Subordinate Judge confirmed. The Respondents must pay the costs of the appeal.

Solicitors: *Messrs Sanderson, Adkin, Lee and Eddie*
for the Appellants.

Appeal allowed with costs.

(APPEAL FROM THE CHIEF COURT OF THE PUNJAB)

*Lord Robertson, Lord Atkinson, Lord Collins, Sir Andrew
Scoble, Sir Arthur Wilson.*

ATAB SINGH and others,

v.

THAKAR SINGH.

*Hindu Law—Husband's estate in possession of widow—
Sale by reversioner—Suit by his sons to set aside sale of
lands as ancestral—Onus of proof—Conjectures and proof.*

Where the Plaintiffs, who were Hindus, sued to set aside a deed of sale executed by their deceased father on the allegation that the lands sold were ancestral and that the sale was not necessary and was for a fictitious consideration and in fraud of the rights of the Plaintiffs' father as next heir and reversioner on the death of the widow of the deceased owner.

Held—That the onus was on the Plaintiffs to show that the lands were not self-acquired lands in the hands of the deceased owner.

There was evidence to show that the deceased owner acquired some lands by purchase and there was a probability that other lands came to him as ancestral, but Plaintiffs failed to prove which portion was self-acquired and which ancestral.

Held—That a solemn deed executed by the Plaintiffs' father could not be set aside upon mere conjectures, and the Plaintiffs' suit must fail.

Appeal by five out of eight Defendants from a decree of Chief Court of the Punjab (Anderson and Robertson, J.J.), dated the 25th May 1903 which reversed a decree, passed by the District Judge of Amritsar (Mr. Harris) who had dismissed Plaintiffs' suit but had ordered each party to pay its own costs.

P. C.

1908

16th July.

The suit was brought to have it declared that at a certain deed of sale, dated the 7th May 1894, executed by the Plaintiff's father Dyal Singh (the 8th Defendant on the record) was an invalid deed and praying that if the deed was held to be partially invalid they should be allowed on payment of such sums out of the consideration-money as were paid for legal necessity to take possession of the properties.

P. C.

1908

Atar Singh and
others.

v.

Ahakar Singh.

Lord Collins.

Mr. DeGruyther for the Appellants.

No one appeared for the Respondent.

Their LORDSHIPS' JUDGMENT was delivered by—

LORD COLLINS.—This is an appeal from a decree of the chief court of the Punjab varying a decree of the District Judge of Amritsar. The suit was brought by Thakar Singh and his brother, Kehr Singh, minors, by their mother acting as next friend, to set aside a deed of sale made on the 7th May 1894 by their father Dyal Singh to the Appellants and certain other persons as purchasers, on the ground that the lands, the subject-matter of the sale, were, in the view of the Hindu law, ancestral, and that the sale was not necessary, and was for a fictitious consideration and in fraud of the rights of the Plaintiff's father Dyal Singh, as next heir and reversioner on the death of the widow of Dhanna Singh, the deceased owner. Kehr Singh died while the suit was pending. The only question in dispute on this appeal is whether the lands were ancestral. The District Judge has held that they were not, the Chief Court has reversed his decision and held that they were.

It is not disputed that the onus on this issue is on the Plaintiffs', and it is because in the opinion of the District Judge they failed to discharge this onus that the suit was dismissed.

It is through their father, as heir of the above named Dhanna Singh, that the Plaintiffs claimed, and unless the lands came to Dhanna Singh by descent from a lineal male ancestor in the male line, through whom the Plaintiffs also in like manner claimed, they are not deemed ancestral in Hindu law. Therefore, if the Plaintiffs cannot show that they were not self-acquired lands in the hands of Dhanna Singh, the suit fails. Now, as the District Judge points out, there is really no evidence that the lands in question came to Dhanna Singh by

P. C.

1908

Atar Singh and
others.V.
Abakar Singh.

Lord Collins.

descent at all. There is evidence that he acquired some lands in the district by purchase from the owners, and there is a probability that he acquired others by the abandonment of other persons who may have been collateral, and, in that way, may have become possessed of lands which, by the custom of the Punjab, would be regarded as ancestral. But there is no evidence whatever defining the boundaries of these portions of land respectively. Indeed, the learned Judges of the Chief Court themselves say: "It is impossible to differentiate between the portions which came from relatives and co-sharers and the portions which may have, in some instance, been purchased." But it is by reason of this impossibility that the Plaintiffs failed to prove their case. The learned District Judge also points out that, since the death of Dhanna Singh, large portions of the land held by him have been sold by his widow, and it is quite possible that all the ancestral land, if he had any was embraced in these sales, and that the sale of the lands in question embraced exclusively self-acquired lands. Their Lordships agree that, when the onus lies, as it does in this case, on the Plaintiffs in seeking to set aside on such grounds a solemn deed executed by their father, conjectures cannot be accepted as a substitute for proof. With the greatest respect to the Judges of the Chief Court their Lordships venture to think that they have hardly given sufficient weight to this consideration. Their Lordships agree with the conclusion and reasoning of the learned District Judge, and will humbly advise His Majesty that the appeal be allowed and the decree of the Chief Court set aside with costs. The Respondent must pay the costs of this appeal, except so far as they may have been increased by the delay which has taken place in the prosecution of the appeal.

Solicitors: *Messrs. Watkins & Lempriere* for the Appellants.

Appeal allowed.

(APPEAL FROM BENGAL).

PRESENT:—*Lord Robertson, Lord Atkinson, Lord Collins,
Sir Andrew Scoble, Sir Arthur Wilson.*

P. C.

1908

MAHOMED ALI HAIDAR KHAN and anr., heirs and
legal representatives of Mahomed Ali Amjad Khan
deceased, Appellants,

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL
and ors., Respondents.

Reg. III of 1891—Jhum cultivation—Legislation to extinguish right to carry on such cultivation outside settled estate—Compensation—Onus to prove that statute applies—Statement of facts in preamble of statute—Value—Question of fact or law—Concurrent findings—Evidence Act (I of 1872), sec. 13—Transactions inter alios.

Reg. III of 1891 when applied to any lands would have the effect of confiscating proprietary rights and giving compensation in exchange. The onus therefore lies on Government to show that the facts of any case are such as to bring it within its operation. The Government must prove that at the Permanent Settlement the officers of the Government included amongst the assets of the estate income derived by its owners from jhum cultivation carried on beyond the limits of the estate.

The argument that under the Regulations then in force no assets not arising out of the estate could be lawfully taken into account, and that a strong presumption was thus raised that the courts which was in accordance with law was followed in a particular case, was not entertained in the face of the preamble to the Regulation which shows that in a number of cases the income of jhum cultivation carried on beyond the estate was rightly or wrongly taken into account.

It was proved that as early as 1837, the owners of the estate received kabuliyats from tenants carrying on jhum cultivation on the disputed land, that in 1842 and 1843 they succeeded in defeating an attempt on the part of persons interested in the adjoining mouzah to exercise rights over the land, and that on several occasions they successfully resisted proposals on the part of the Revenue authorities to settle portions of the land as *Islam* land, open for settlement.

Held—That from this and other evidence of continuous possession and enjoyment, it should be inferred that the land was included within the permanently settled estate of the owners, and the Regulation had no application to it.

P. C.

1908

Mahomed Ali
Haidar Khan
and anr.,

v.
Secretary of
State for India
in Council.
and ora.

Sir Arthur
Wilson.

The question here was in one sense a question of fact, but every point in the process of the reasoning involved considerations of law, and thus although the findings of the Courts in India were concurrent the Judicial Committee could review such findings in appeal.

This was an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal, dated the 29th March 1904, which affirmed a judgment and decree of the Subordinate Judge of Sylhet, dated the 15th April 1899.

The principal questions raised on the present appeal were the nature and extent of the Appellants' rights over the land in suit and the application thereto of Reg. III of 1891.

Sir R. Finlay, K. C., and Mr. DeGruyther, K. C., for the Appellant.

Mr. Arthur Cohen, K. C., and Mr. Ross for the Respondent.

Their LORDSHIPS' JUDGMENT was delivered by—

SIR ARTHUR WILSON.—This is an appeal against a judgment and decree of the High Court of Calcutta, dated the 29th March 1904, which affirmed the judgment and decree of the Subordinate Judge of Sylhet, dated the 15th April 1899.

The question raised upon the appeal is whether Reg. III of 1891, issued under the authority of the Act 33 Vict, c. 3, can properly be applied in the case of certain lands known by the name of Puber Pahar.

The Regulation in question begins with a most useful preamble, which recites as follows:—

Whereas the officers who effected the permanent settlements of certain estates in the district of Sylhet included, for the purposes of assessment, among the assets of those estates, under the designation of *jhum* the income then derived by the proprietors of those estates from shifting cultivation carried on by them or their dependents beyond the limits of those estates, and from tolls levied by them on forest-produce cut, gathered or enjoyed in places beyond the limits of those estates ;

And whereas, inasmuch as the said cultivation and the operations of those who cut, gathered or enjoyed the said forest-produce shifted from year to year over immense and

altogether undefined areas, the tracts of land over which they extended were not specified at the time of the settlement, and, in consequence of this, rights of various, and in some cases, vague, descriptions are from time to time asserted by the said proprietors over immense and undefined areas ;

And whereas it is thus impossible for any person to obtain a safe and clear title to land in those areas, and the extension of cultivation is, in consequence, impeded;

And whereas it is expedient that the rights, if any, corresponding to the said *jhum*...assets should be commuted.

Sec. 2 enacts that:—

All rights.....in respect of which *jhum*...assets were assessed in any permanent settlement of land, or which have been at any time acquired by virtue of or under cover of such assessment shall be deemed to have been extinguished.

And Sec. 3 declares that all proprietors of such estates shall be entitled to compensation.

The nature of *jhum* cultivation is explained in an early official document relating to the hill lands in question:—

The dastur of *jhum* cultivation is this: *jhum* is not cultivated in one place every year. When land is found any where within these boundaries *jhum* cultivation is made thereon, and after measurement and assessment the Mirasdars take the rest by apportionment according to their respective shares in the *jhum* revenue at the time of the *hasbud* measurement."

And that description seems to be correct to the present day.

After the passing of the Regulation the Government of Assam, whose jurisdiction included Sylhet, issued and published orders in due course, extending the Regulation to the areas in question, with others.

The question, therefore, raised in the case and discussed on this appeal is whether the Regulation can be put in force with reference to the lands to which it sought to apply it. Those lands have undoubtedly been long in the enjoyment (such enjoyment as is practically possible under the circumstances of the case) of the Appellant's predecessors in title.

P. C.

1908

Mahomed Ali
Haidar Khan
and anr.,

v.
Secretary of
State for India
in Council
and ors ,

Sir Arthur
Wilson

P. C.

1608

Mahomed Ali
Haidar Khan
and anr.,
v.

Secretary of
State for India
in Council.
and ors.,

Sir Arthur
Wilson.

The Government claims to apply to these lands a Regulation which would have the effect of confiscating proprietary rights, and giving compensation in exchange. Under these conditions their Lordships think it clear that it lies upon the Government to show that the facts of the case are such as to bring it within the operation of the Regulation—in other words, that the present case is one in which, at the Permanent Settlement, in making settlement of certain taluks with the Appellants' predecessors in title, the officers of Government included for the purposes of assessment, among the assets of those taluks the income derived by their owners from *jhum* cultivation carried on beyond the limits of the settled estate.

That the taluks now held by the Appellants were settled at the Permanent Settlement is beyond dispute, and that in estimating the assets of those taluks the profits of the present *jhum* lands were then brought into account is also beyond dispute. But according to the Appellants those profits were taken into account because the *jhum* lands formed part of the settled estate; while, according to the other side, the *jhum* land profits were taken into account as assets accruing to the owners of the settled estate, but derived from lands lying outside them. The question is which of these views is to be accepted.

It was contended on behalf of the Secretary of State that the question whether the *jhum* lands lay within or without the limits of the settled estates was a question of fact, and that their Lordships should accept the concurrent findings of the two Courts in India. This contention their Lordships are unable to accept. In a sense the question is one of fact; but at every point in the process of the reasoning considerations of law have to be regarded.

It was contended on the other side that, under the regulations in force at the time of the Permanent Settlement, no assets could lawfully be taken into account in settling the jumma of an estate, except those arising out of the estate itself; and that this consideration established a very strong presumption that in any individual case the course in accordance with law had been followed. But this contention was

met, and in their Lordships' opinion effectively met, by a reference to the preamble of the Regulation under consideration. That preamble shows that the course said to have been impossible was in fact followed, rightly or wrongly, and followed, in a number of cases sufficient to render legislation desirable. It remains, however, to consider, in each case that comes before the Courts, whether the facts bring the case within the operation of the Regulation.

The taluks in which the lands in question are said to have been included were, no doubt, settled at the Decennial Settlement, and that settlement was in due course made permanent. But as might be expected after so great a lapse of time, little now survives of the original official papers, and what does survive is not very easy to construe.

The most important of the early documents are certain Mouzawari papers from 1801-02 onwards. These show clearly that, in assessing the taluks, the *jhum* assets were taken into account. But this, as has been shown, is a neutral fact consistent with the case of either party. Beyond this it is difficult to carry the effect of those papers.

Those papers were examined in detail by Counsel upon both sides on the argument of the appeal. It appears to their Lordships unnecessary to repeat that examination. It is enough to say that there are circumstances favourable to one side and circumstances favourable to the other, but that no confident conclusion could be drawn from these papers either one way or the other.

Reliance was also placed upon certain thakbast maps, but these are equally inconclusive.

The only other matter which remains to be considered is the evidence as to possession and enjoyment of the lands in question on the part of the Plaintiff and those who preceded him. In the Courts in India the Plaintiff sought to establish a title by adverse possession for sixty years. In this he was held to have failed, and on the argument of the appeal no such case was contended for, but the evidence of possession and enjoyment was relied upon as proof of title.

Regarded in this light, that evidence is important and it all points one way. It was shown that from as early as 1837 the Appellants' predecessors in title received *kabuliyats* from persons carrying on *jhum* cultivation on the lands in question.

P. C.

1608

Mahomed Ali
Haider Khan
and anr.,

v.

Secretary of
State for India
in Council.
and ors.,

Sir Arthur
Wilson.

P. C.

1908

Mahomed Ali
Haidar Khan
and anr,

v.

Secretary of
State for India
in Council,
and ors.

Sir Arthur
Wilson.

In 1842 and 1843 those predecessors in title succeeded in defeating an attempt to exercise rights over these lands on the part of the persons interested in an adjoining Mouzah.

On several occasions in subsequent years the Appellants' predecessors successfully resisted proposals on the part of Revenue Officers of Government to settle portions of these hill lands as ilam lands open for settlement. The most important instance was one that terminated in an order passed by the Board of Revenue (the highest Revenue authority in the Province) dated the 14th September 1855 It had been proposed to offer for settlement a portion of the lands now in suit as ilam land. This was objected to by the Appellants' predecessors. The Collector overruled the objection, but the Board of Revenue, concurring with the Commissioner, reversed that finding, and on the ground, as their Lordships understand it, that the lands were included in the Permanent Settlement. After that the possession and enjoyment of the Appellants and those through whom they claim seem to have been continuous.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decrees of the Courts in India should be set aside with costs, and a decree made granting the Appellants the declaration asked for by the plaint. The Respondent, the Secretary of State, will pay the costs of this appeal.

Solicitors: *Messrs. T. L. Wilson & Co.* for the Appellants.

Solicitor, India Office, for the Respondent.

Appeal allowed with costs.

THE BANK OF BOMBAY AND ANOTHER.

v.

SULEMAN SOMJI AND OTHERS.

P. C.

1908.

Equitable mortgage—Mortgagor—executor—Legatee having a charge, not bound—delay in setting up claim.

In a suit to establish the priority of a charge in respect of an unpaid legacy over property of which an equitable mortgage was made, the mortgagors being residuary legatees as well as executors, and the mortgagees not

being shown to have made any investigation of the title, Held, that the claim must prevail over the mortgage.

A mortgage by an executor who is also residuary legatee to secure his private debt may be set aside even at the suit of a pecuniary legatee, for the nature of the claims of legatees, they taking under the will, may be ascertained. But as to creditors it is different. If a reasonable time has elapsed since the death of the testator, and then the executor deals with the residue as his own, the purchaser may, in the absence of notice to the contrary, assume that the debts have been paid, or that there are other assets for payment of the debts, if any; therefore the mortgagee would be safe as against creditors.

Graham v. Drummond, L. R., (1896) 1 Ch., 968,974, distinguished.

In re Queales Estate, 17 L. R., (Ir.) 361, referred to.

Where the mortgage was executed long after the time when by the terms of the will the legacy was to be made up and paid, but the legacy had remained unsatisfied, lapse of time was, no doubt, a circumstance to be considered as implying the consent of the legatee to the executor's act, but the minority of two of the legatees at the time of the mortgage and the continued possession of the mortgagors rendered that principle inapplicable.

APPEAL from the judgment of Sir Lawrence Jenkins, C. J., and Batty, J., of the High Court of Judicature at Bombay.

The material facts appear from the judgment.

Sir R. Finlay, K. C. Levett, K. C., and Frank Russell, K. C., for the appellants.

Dunkwerts, K. C., and Stokes, for the respondents.

The judgment of their Lordships was delivered by

SIR ANDREW SCOBLE.—The facts relating to this appeal are not in dispute, and may be shortly stated.

Somji Parpia died on the 15th February, 1885. He left eight sons, four by his first wife (hereafter called the elder sons) and four (hereafter called the younger sons) by his second wife Labai, who also survived him. By his will, he left all his property to his elder sons, subject to a charge of Rs. 30,000 in favour of his widow Labai and his younger sons. Both courts in India have found that this legacy was charged upon the property in suit, and their Lordships agree with this decision.

After their father's death, the elder sons entered upon large business transactions, under the style of Somji Parpia

P. C.

1908.

The Bank of
Bombay and
another.

v.

Suleman Sonji
and others.

Sir Andrew
Scoble.

P. C.

1908.

The Bank of
Bombay and
another.
v.

Suleman Somji
and others.

Sir Andrew
Scoble.

& Co, and in the course of their business became indebted to the Bank of Bombay in respect of advances on bills drawn by the firm in Bombay upon a branch of the firm at Indore. To secure these advances, the elder sons, on the 1st September, 1890, deposited certain title deeds relating to the property in suit, by way of equitable mortgage, with the Bank; and on the 12th of January, 1899, the Bank obtained from them a formal mortgage of the same property, to secure the repayment of Rs. 52,000 in respect of bills then due or to become due, drawn by the firm on their Indore branch. It is not disputed that this debt was a debt of the four elder sons in respect of their own business, and that the legacy to the widow and the younger sons was at the time, and still is, unsatisfied.

The property comprised in the mortgage consisted of a house in Bhaji Pala Street and a piece of land in the Falkland Road, in the City of Bombay, to both of which the mortgagors declared themselves to be entitled, but both of which had been specified by their father Somji Parpia, in his will, as subject to the charge of Rs. 30,000 in favour of his widow and younger sons. This will was not among the documents of title deposited with the Bank, but the root of the title to the house in Bhaji Pta Street, the more valuable of the two properties, was indicated in the will of Meenabai, widow of Somji Parpia's father Dhunji Parpia, which was deposited. From this it appeared that the house had been the joint property of the two brothers and if the bank's legal advisers had made any investing of title, they must have enquired how Somji's share had come to the mortgagors, and in this way obtained cognizance of his will, and of the charge on this portion of his estate. But they made no enquiry, and appear to have assumed that the mortgagors were the absolute owners of the property mortgaged that the mortgagors practised any concealment of the real facts of the case; and if they had been asked about their father's will, it is to be presumed that they would have given an honest answer.

Nor is it suggested that the younger sons had any knowledge of the dealings of their elders with the Bank. But when the Bank advertised the properties for sale, they filed this suit in order to establish the priority of their charge over

the mortgage to the Bank. And the only question in this appeal is whether they are entitled to such priority.

Mr. Levett, in his able argument for the appellants contended that under the will of Somji Parpia, the mortgagors were residuary legatees as well as executors, and he relied upon a passage in the judgment of Romer, J., in *Grahan v. Drummond* (1), in which that learned Judge says (at. p. 974);

"I think it is settled law that, if an executor who is also residuary legatee, sells or mortgages an assent of the testator for valuable consideration to a person who has no notice of the existence of unsatisfied debts of the testator, or of any ground which rendered it improper for the executor so to deal with the assent, that person's purchase or mortgage is valid against any unsatisfied creditor of the testator"

But this does not dispose of the present case. Here the plaintiffs are legatees, and the distinction between creditors and legatees is well pointed out in Spence's "Equitable Jurisdiction," vol. ii. p. 376, where it is said:—

A mortgage by an executor who is also residuary legatee to secure his private debt may be set aside even at the suit of a pecuniary legatee, for the claims of legatees, they taking under the will, may be ascertained. But as to creditors it is different. If a reasonable time has elapsed since the death of the testator, and then the executor deals with the residue as his own, the purchaser may, in the absence of notice to the contrary, assume that the debts have been paid, or that there are other assets for payment of the debts, if any; therefore the mortgagee would be safe as against creditors."

Moreover, in this case, the mortgagee had constructive notice, and has only himself to thank if his position is not safe; for had he taken the slightest pains to investigate the title of the mortgagors he must certainly have discovered the charge created by the will of Somji in favour of the widow and her sons.

It was also contended that by the terms of the will the legacy was to be made up and paid within six years after the testator's decease; that this period would have expired in 1891, eight years before the date of the mortgage; and that assuming notice of the will on the part of the Bank, the Bank

P. C.

1908.

The Bank of
Bombay and
another.

v.
Suleman Somji
and others.

Sir Andrew
Scoble.

P. C.

1908.

The Bank of
Bombay and
another.

v.

Suleman Somji
and others.

Sir Andrew
Scoble.

was entitled to assume that the executors were acting with the consent of the legatees. Lapse of time, is, no doubt, a circumstance that may be taken into consideration in cases of this kind; but having regard to the fact that, in this case, two of the younger sons were still minors when the title-deeds were deposited with the Bank, and that continued possession by the elder sons was not inconsistent with the purposes of the will, their Lordships agree with the court below in holding the right of the parties unaffected by this circumstance.

The case of *In the Queale's Estate* 17 L. R. (Ireland) 36 bears a strong resemblance, in its facts, to that now under consideration. There the testator's son deposited with a bank three leases to secure him as absolute owner, and eventually proceeded to sell the leaseholds; whereupon the testator's daughters claimed to be placed on the schedule as encumbrancers in respect of unpaid legacies, and their claim was allowed. In delivering judgment, Fitz Gibbon L. J. says:—

"The Bank dealt with him (the mortgagor) as and in his capacity of an individual owner, not an executor, but a person pledging his own property for his own debt, giving as security his own purposes. Under such circumstances the bank can, in my opinion have no better title than that which its debtor really had in the capacity in which he was dealt with namely as beneficial owner *i. e.* as residuary legatee."

Their Lordships agree with the learned Judges of the High Court of Bombay that the claim of the first four respondents (the younger sons of Somji Parpia) must prevail over the mortgage to the Bank and the title of its transferee, Dwarkadas Dharmsey, and they will humbly advise His Majesty that this appeal should be dismissed, and the decree of the High Court of the 14th April, 1905, Confirmed. The appellants must pay the costs of the appeal,

Solicitors for the appellants: Messrs *Cameron, Kemm & Co.*

Solicitors for the respondents: Messrs. *Rawale, Johnstone & Co.*

Appeal dismissed.

(APPEAL FROM THE JUDICIAL COMMISSIONER
OF OUDH.)

P. C.

1808

Lord Robertson, Lord Atkinson, Lord Collins, Sir Andrew
Scoble, Sir Arthur Wilson.

KALKA PARSHAD and others,

Plaintiffs Appellants,

v.

MATHURA PARSHAD and ors.,

Defendants, Respondents.

Evidence Act (I of 1872), sec. 32 (5)—Pedigree, proof of—Statement as to relationship made by family members before dispute, admissibility—Pleading—Estoppel—Question of fact decided in favour of a party in the first Court—Abandonment of point on appeal, if same may be raised in further appeal—Hindu Law—Mitakshara—Succession—Samanodaka and sister's son which to be preferred.

A pedigree put forward by the Plaintiffs in support of their claim was accepted by the Court of first instance as proved; but on appeal the Appellate Court held the evidence adduced in support of it to be worthless, and moreover observed that " at the hearing of the appeal practically no attempt was made to support the finding " of the Court of first instance,

HELD—Upon a consideration of the circumstances of the case, that the Plaintiffs were not estopped on this appeal from endeavouring to sustain the finding of the Court of first instance in their favour.

Pedigrees which did not constitute ancient family records handed down from generation to generation and added to as a member of the family died or was born, but were drawn up on a particular occasion for a specific purpose by members of the family—must be treated as mere declarations made by the persons who respectively drew them up or adopted them. Such of them as were made post litem motam are inadmissible in evidence. But in order to make such a statement inadmissible on this ground, the same thing must be shown to have been in controversy before and after the statement was made.

FREEMAN v. PHILLIPS 4 M. and S. 486, 484, 497 (1816)
SHREWSBURY v. PENNAGE, 7 H. L. C. 1. 22 (1858). DUKE OF
DEVONSHIRE v. NEILL 2 Ir. L. R. 132. followed.

Plaintiffs' father and the deceased owner were proved to be only six degrees removed from their common ancestor and being Samanodakas the Plaintiffs were held to be preferential heirs to the son of deceased's sister.

P. O.

1908.

Kalka Prasad
v.
Mathura Prasad

This was an appeal from a decree passed by a Bench of the court of the Judicial Commissioner of Oudh (Ross Scott. J. C., and Wells, A. J. C.), dated the 17th April 1906, which reversed the decree of the Subordinate Judge of Unao, dated the 16th December 1903.

Mr. DeGruyther, K. C., for the Appellant.

Mr. Ross for the Respondent.

Their LORDSHIPS' JUDGMENT was delivered by

Lord Atkinson.—The suit out of which this appeal arises was instituted by the Appellants who are the three sons of one Sheo Sahai, deceased, claiming through their father as heirs of one Gur Sahai, deceased, to recover possession of immovable property in the plaint described, of which Gur Sahai died possessed about 40 years ago.

Gur Sahai was succeeded in the possession and enjoyment of the property by his widow, Mnsammatt Parbati, who died on the 22nd March 1896. Sheo Sahai died on the 22nd September 1899.

The principal Defendant, the Respondent Mathura Parshad is the nephew of Gur Sahai, his sister's son. He took possession of the property on the death of Musammatt Parbati still retains it, and succeeded in obtaining a mutation of names in his own favour.

Only two questions were discussed on the hearing of the appeal, and it is only necessary for its decision that their Lordship should deal with these. They are:—

1. Is it open to the Plaintiffs, owing to what took place at the first hearing before the Court of the Judicial Commissioner, to attempt to establish that they are, according to Hindu Law, the heirs of Gur Sahai ?

2. If it be open to them to do so, is the evidence, legally and properly admissible, given before the Subordinate Judge, who tried the case in the first instance, sufficient to establish the fact of their alleged heirship ?

The course the proceedings took before the Court of the Judicial Commissioner is some what peculiar. The Plaintiffs at the hearing, examined several witnesses and gave in evidence several pedigrees which, in the opinion of the Subordi-

nate Judge, proved that Gur Sahai and Sheo Sahai were descended from one common ancestor, Partab Mal, son of Chajmal Das, were only seven degrees removed from that ancestor, and that the Plaintiffs were, through Sheo Sahai, heirs of Gur Sahai. Mathura Pershad filed a degree which showed that Gur Sahai was not descended from Partab Mal at all but from another son of Chajmal Das, a younger brother of Partab Mal at named Shiam Das, that Gur Sahai stood in the 15th degree from the common ancestor, Chajmal Das and Sheo Sahai in the 16th degree; and he contended that, under the Hindu Law, heirship did not extend beyond the 14th degree; and that therefore he (Mathura Pershad), though only a sister's son, was to be preferred as heir to such remote relations.

No evidence whatever was given to prove the latter pedigree. Indeed it was abandoned by the Respondents on this appeal. Yet the Court of the Judicial Commissioner, finding that it showed that five other persons stood in the same degree of relationship of Chajmal Das as did Sheo Sahai, held that Hindu Law permitted them, notwithstanding this, to succeed heirs to Gur Sahai, and gave a decree for possession of one-fifth (not one-sixth as it should have been) of the land, the recovery of which was sought as the share of Sheo Sahai therein.

Thereupon the Defendants Nos. 1 and 2 applied under sec. 623 Civil Procedure Code for a review of their judgment, setting forth amongst other things:—

That the Court had held that the pedigrees set up by the Plaintiffs were not proved, and that they were therefore not exclusively entitled to the property in suit.

2. That the question whether persons in the 16th degree could be preferred to Mathura Parsbad, the nephew, was not allowed by the Court to be fully argued.

On this application the Court of the Judicial Commissioner decided that the Hindu Law forbade what they had previously decided; it permitted, namely, the succession of a person sixteenth in descent from a common ancestor, on the ground that he could scarcely be said to be a relation at all and that therefore the nephew Mathura Parsbad be considered as nearer heir to Gur Sahai. They accordingly dismissed the Plaintiffs' suit with costs. It is to be observed, however, that

P. C.

1908.

Kalka Prasad
v.
Mathura Prasad
Lord Atkinson

P. C.

1908.

Kalka Prasad

v.
Mathura Prasad

Lord Atkinson

the Court, in deciding on this application, made no reference to the first point which they had decided, viz., that the pedigree set up by the Plaintiff was not proved.

In the first judgment of the Court they state that the finding of the Subordinate Judge that both Gur Sahai and Sheo Sahai were seventh in descent from Partab Mal, had been challenged by the Defendants' advocate who contended that the Plaintiffs had failed to prove the pedigree on which they relied and that all documentary evidence on which the Lower Court based its finding was inadmissible. They then proceeded to devote four pages of their judgment to a minute and critical examination of the evidence, written and oral, adduced by the Plaintiffs, giving their reasons for holding that the documents were inadmissible, and the witnesses unworthy of belief, and they wind up this examination with the passage on which the Respondents rely as sufficient to shut out the Plaintiffs from attempting to sustain the decision of the Subordinate Judge. It runs as follows:—

“ The oral evidence to prove the pedigree in the plaint is thus, in my opinion, of as little value as the documentary evidence on which the Plaintiffs relied, and at the hearing of the appeal, practically no attempt was made to support the finding of the Subordinate Judge. The only contention was that, accepting the pedigree filed by the Appellant, Mathura Prasad, the Plaintiffs are heirs of Gur Sahai, as according to it if they are *samanodakas*; and therefore in the absence of other nearer heirs exclude the Defendant, who is the son of Gur Sahai's sister. ”

It is inconceivable why the evidence given before the Subordinate Judge should be thus elaborately reviewed, if the Plaintiff's advocate had formally admitted he could not support that Judge's finding. It is almost as strange that this advocate should confine himself to a contention based on a pedigree proved by nobody, and binding on no body but the person who filed it, and which, at the best, could only secure to his clients one-sixth of what they sought to recover. It is not less peculiar that the contention which is stated to have been the only contention put forward by the Plaintiffs, is the very contention which was conducted in such a fashion that a

review was successfully applied for. Having regard to these several matters it appears to their Lordships impossible to hold that the Plaintiffs are by the statement contained in this paragraph estopped from endeavouring to sustain, on this appeal, the finding of the Subordinate Judge on this point. The second question, therefore, alone remains for decision.

The Plaintiffs gave in evidence at the trial these pedigrees, amongst others, namely (1) a pedigree purporting to have been written by one Maharaj Bahadur in 1872; (2) a pedigree purporting to have been filed by Sheo Sahai in 1892 or 1892 in a civil suit concerning lands other than and different from the lands sued for in this action, in which Sheo Sahai was Plaintiff and Kesho and others Defendants; (3) a pedigree filed in a suit brought for the recovery of the possession of certain lands in which Shankar Sahai (the son of the 2nd defendant) was Plaintiff, and Fazal-Husain and others were Defendants. The Subordinate Judge, though he held—quite rightly, in their Lordships' opinion—that the controversy out of which this appeal has arisen is but a stage in the dispute which arose on the death of Musammatt Parbati in 1896, admitted each of these pedigrees in evidence, and the plaintiffs relied strongly upon them. They are not ancient family records handed down from generation to generation and added to, as a member of the family dies or is born, but documents drawn up on a particular occasion for a specific purpose by members of the family and must accordingly be treated as mere declarations made by the persons who respectively drew them up or adopted them. Taking them in the reverse order, the last is inadmissible, having been made *post litam motam*. The second is endorsed: “(Signed) Sheo Sahai, Plaintiff, by the pen of Sundar Lal, Special Agent,” and is on the evidence of Sundar Lal clearly admissible as a declaration made by a deceased member of a family touching the family reputation or tradition on the subject of its descent. It was held by the Court of the Judicial Commissioner not to be admissible on the same ground as the third pedigree because, in a statement made by Musammatt Parbati in the absence of Sundar Lal, in a suit instituted by him against her in the year 1891 for cutting down trees in a certain grove in the village of Ranpur Ansu, which he alleged was a halting place, she had said:—“I have kinship with him,

P. C.

1908.

Kalka Prasad

v.

Mathura Prasad

Lord Atkinson

P. O.

1908

Kalka Prasad
v.
Mathura Prasad
Lord Atkinson

nor am I on visiting and dining terms with him as a fellow-caste-man. He has no concern with my proprietary interest (*hakkiat*).

The Plaintiff's [Sunder Lal's] father, and his co-sharers have vested their shares in the *hakkiat*. But it is clear that the controversy to which this statement refers was not a controversy as to the heirship to Gur Sahai, but referred to an entirely different matter. In order to make the statement inadmissible on this ground, the same thing must be in controversy before and after the statement is made—*Freeman v. Phillipps* (1) 4 M. and S. 486, 494, 497 (1816.) *Shrewsbury v. Peerage* (2) 7 H. L. C. 1, 22 (1858). *Duke of Devonshire v. Neill* (3) 2 Ir. L. R. 132. In their Lordships' opinion, having regard to the evidence of Sunder Lal and of the other witnesses examined for the Plaintiffs, this pedigree was clearly admissible.

The first pedigree purports to be signed by Maharaj Bahadur, a son of Sheo Narain, a deceased member of the Plaintiffs' family, who was however not examined as a witness. According to the evidence of Kalka Parshad, it was in the handwriting of the former and was obtained by him from Sheo Narain in the years 1894—1896 (the precise date is not fixed) as a statement of the family descent, for the purpose of being given in evidence in certain criminal proceedings instituted under sec. 323 of the Indian Penal Code in the case of *In re Baiju and others v. Sunder Lal and Durga Parshad*. It was thus adopted by Sheo Narain, is not shown to have been made *post litem moram*, and is, therefore, in their Lordships' opinion, admissible.

These pedigrees disclose that Gur Sahai and Sheo Sahai are descended from a common ancestor, Partab Mal, one of the sons of Chajmal Das, the first through his son Har Parshad, the second through his son Ram Ghulam, each being six degrees removed from Partab Mal. Six of the many witnesses examined on behalf of the Plaintiffs, members of the family, prove descent from this common ancestor. Three of these, namely, Kalka Parshad, Mohabbat Rai, and Sunder Lal, prove pedigrees, substantially identical with that signed by Sheo Sahai filed in 1892 or 1894, and others, such as Hazari Lal, prove

important portions of it; while Lalta Parshad, one of the Defendants' witnesses, deposed as follows:—

“ Sheo Sahai also belongs to the family of Gur Sahai. I have heard that he is also remote by six degrees. In my opinion both (i. e., Madho Ram and Sheo Sahai) are equally related, i. e., in the same degree.”

And Sri Kishen, another witness for the Defendants, a priest of the family of Sita Ram deposed:—

“ Sheo Sahai and Sheo Narain descend from Ram Ghulam, Gur Sahai descends from Har Parshad; Ram Ghulam, Har Parshad, and Shiam Das are sons of Partab Mal.”

This evidence precisely accords with the abovementioned pedigrees numbered 1 and 2, proves, in fact, some of the most important steps in them, and is, therefore, the strongest corroboration of them.

Further corroboration of these pedigrees is to be found in the mode in which a certain Mohalla Sarai has been enjoyed. The family reputation is that this Sarai was founded by Sundar Das (one of the brothers of Partab Mal), who died childless. If the pedigrees of 1872 and 1894 be correct, then half, or an 8 annas share in this Sarai, should be found in the enjoyment of the descendants of Partab Mal, and the remaining 8 annas share in the enjoyment of the descendants of Shiam Das, the only brother of Partab Mal who had descendants. That, according to the evidence of Raghunath Parshad and Kalka Parshad, is precisely what is found. Two annas shares were enjoyed by Sheo Sahai, Sheo Narain, and Gur Sahai respectively; a 2 annas share by Sheo Dyal and Ram Dyal (who died childless) jointly, and the remaining 8 annas by Sita Ram, Gur Parshad, Ram Narain, Shankar Sahai, and other descendants of Shiam Das. The Subordinate Judge points out that had Sheo Sahai and Sheo Narain been descended, as was contended for by the Defendants, from Shiam Das and not from Partab Mal, the whole 8 annas share of Partab Mal must, in the events which have happened, have come to Musammat Parbati. Sita Ram, one of the Defendants, gives in detail the distribution of an 8 annas share in the Sarai coming into the hands of his branch of the family, and states that the Sarai is joint property. No evidence is given to contradict that of Raghunath

P. C.

1908.

Kalka Prasad

v.
Mathura Prasad

Lord Atkinson,

P. C.

1908.

Kalka Prasad
v.
Mathura Prasad
—
Lord Atkinson

Parshad and Kalka Parshad as to the persons amongst whom the share of Partab Mal in the Sarai is distributed.

It was argued by Mr. Ross, on behalf of the Defendants, that the fair conclusion to be drawn from the evidence was that Maharaj Bahadur was either not born in 1872, or was then of such tender years that he could not have drawn up the first pedigree, as deposed to by Kalka Parshad. No doubt there is much force in this argument, but, even if it prevailed, there remains the second pedigree, that of 1892, corroborated as it has been in the manner pointed out.

Their Lordships think that it is impossible to put aside all this evidence, as was done by the Court of the Judicial Commissioner. They are, therefore, of opinion that the conclusion at which the Subordinate Judge arrived is that to which the evidence properly admissible, on the whole most reasonably leads, and that the decision of the former tribunal was erroneous and that its decrees should therefore be reversed with costs, and this appeal allowed. They will humbly advise His Majesty accordingly. The Respondents must pay the costs of the appeal.

Solicitors: *Messrs. Young, Jackson, Beard & King* for the Respondents.

Solicitors: *Messrs. T. L. Wilson & Co.* for the Respondents Nos. 1 and 2.

Appeal allowed with costs.

GOVERNMENT NOTIFICATION, H. C. CIRCULARS, AND REVIEWS.

Cantonment Act, No. 276.—In exercise of the powers conferred by S. 17, sub-section (1), clause (b) of the Cantonments Act (XIII of 1889), and with the previous sanction of the Governor General in Council, the Governor in Council is pleased to modify the octroi duties imposed in the Ahmedabad Cantonment by Government Notification in the Military Department, No. 617, dated the 11th October 1887, as subsequently amended by directing that such duties shall not be levied on goods which at the time of import are the property of Government are accompanied by an invoice endorsed to that effect by the proper Government officer.
(Bom. G. G., 1908, 36).

—————**No. 277.**—In exercise of the powers conferred by section 17 sub-section (2) of the Cantonment's Act, 1889, and with the previous sanction of the Governor General in Council is pleased to add the following rule to the rules for the recovery and refund of octroi duties in the Ahmedabad Cantonment published in Government Notification in the General Department, No. 4001, dated the 1st August 1903, namely:—

“II Octroi paid on goods which were not at the time of import the property of goods imported for the use of Government, but which were become the property of imported for the Government after import use of Government shall be refunded, if—

- (a) at the time of import such goods are declared to be intended for the use of Government, and
- (b) after such goods have actually become the property of Government, a certificate to that effect signed by the Department officer concerned is presented within a week of its being granted, at office of the Secretary to the Cantonment Committee.

—————**No. 398.**—In exercise of the powers conferred by S. 28 of the Cantonments Act XIII of 1889, the Governor in Council is pleased to extend Ss. 66 (1) (P.), 76, 77, 82, 84, 85, 89, 90, 230, 231 and 280 of the Cantonment Code, 1899, which is in force in the Cantonment of Kirkee to the area hereinafter described beyond the said Cantonment and in the vicinity thereof, namely:—

The area enclosed between the limits of the Kirkee Cantonment and a line drawn from a point on the left bank of the river opposite Kirkee Cantonment Boundary Pillar No. 25 to a point on the Alandi Road 200 yards east of the mile-stone situated at the 4th mile from the General Post Office Poona, and thence in a south-westerly direction to direction No 3, Cantonment Boundary Pillar East Kirkee.

(1908, Bom. G. G. 54.)

Adulteration Prevention Act, No. 341.—In exercise of the powers conferred by S. 1 (4) (b) of the Bombay Prevention of Adulteration Act II of 1899, the Governor of Bombay in Council is pleased to direct that Ss. 2, 3 and 4 of the said Act and sub-section (2) of S. 142 of the Bombay District Municipal Act, 1901, shall come into force within the Municipal District of Lonavla with effect from the 1st March 1908; and the Governor of Bombay in Council is pleased further to direct, under S. 1 (5) (a) (ii) of the said Act, that the provisions of the said Act for the time being, not be applicable in the said Municipal District to any food or drink other than milk.

(1908, Bom. G. G. 54.)

Sea Customs Act.—In exercise of the powers conferred by Section 19 of the Sea Customs Act (VIII of 1878) the Governor General in Council is pleased to prohibit the taking by sea or by land of Mhowra flowers from any part of British India to any part of the Indian Possessions of His Majesty's the King of Portugal and Algarves. (1908, Bom. G. G. 45)

Provincial Insolvency Act No. 79.—In exercise of the power conferred by sec. 5 of the Scheduled Districts Act, 1874 (XIV of 1874) the Governor in Council, with the previous sanction of the Governor General in Council, is pleased to extend the Provincial Insolvency Act, (III of 1907), to the Town and Cantonment of Karachi in the Province of Sind, with effect from the 1st January 1908.

Civil Court at Patan, No. 6845.—The orders contained in Government Notification No. 4655, dated the 14th August 1907, directing that the Subordinate Judge of Patan in the Satara District should hold his Court at Karad, are withdrawn with effect from the 1st January 1908.

(B. G. G. 2059)

Land Revenue Code No. 296.—In exercise of the power conferred by section 73 A of the Bombay Land Revenue Code, 1879 (Bom. VI of 1879), as amended by the Bombay Land Revenue Code Amendment Act, 1907 (Bom. VI of 1901), His Excellency the Governor in Council is pleased to declare the provisions of that section applicable to the villages of Shri-

kheda and Biladi in the Shahada Taluka of the West Khandesh District.
(1908 B. G. G. P. 42)

—No. 12741—In exercise of the powers conferred by section 216 of the Land Revenue Code, 1879, as amended by Bombay Act VI 1901, the Governor in Council is pleased to authorise the extension of the provisions of Chapters VIII and IX of the said Code to the village of Kanhersar in the Khed Taluka of Poona District. (Bom. G. G. p. 71)

REVIEWS

The Institutes of Mussalman Law.—By Nawab A. F. M. Abdur Rahman of the Inner Temple, Bar-at-Law, Judge Presidency Court of Small Causes, Calcutta, Thacker Spink & Co. 1907. Pages 532. Price Rs. 16.

We welcome this standard Edition of Mahomedan Law which purports to treat of the personal law according to the Hanafite and Shia Schools with references to original Arabic sources in addition to decided cases. An examination of Mr. Abdur Rehman's work has satisfied us that what Ghose's admirable work is to Hindu Law, Mr. Rehman's is to Mahomedan Law—both being authoritative treatises on personal law of the great communities based on original sources and not merely on Judge made law, Mr. Rehman seems to have taken his inspiration for the work from the *Droit Mussalman* of Kaderi Pacha of Egypt. With all the solicitude some of our present Judges of High Courts have to receive help of the Moulvis versed in Arabic and translations made from the original Arabic sources for the particular occasion when abstruse and intricate questions of Musalman Law are involved in cases before Indian Courts, it is a matter of common knowledge that that mode of instructing the Bench and the Bar involves great hardship and has besides failed to serve the necessary purpose. The situation was therefore by no means satisfactory to the Mussalman community of this country and now we are glad to find that gap is attempted to be filled and in our opinion successfully by the book before us. The author has carefully collated the rules of law laid down in the different articles with the original Arabic copy and has utilized for the purpose of this treatise such works on Mahomedan Law as have been recognized and acknowledged as authorities in this country by virtue of their authenticity and antiquity or erudition of their authors. In order to enable a reader to go direct to the original sources without much trouble and find out for himself the true and correct law, Mr. Rehman has traced the original sources of every rule of law laid down in

the different articles and has collected the corresponding original Arabic texts in the appendix, rticle by article ; and to enable him immediately to see how those authorities lay down the principles in an uncodified form, references are given to Ballie's Digest, Hamilton's Hedaya, and Macnaughtens M. Law. We must say that the volume is bound to serve as a handy book on Mussalman Law such that the minimum of labour may yield the maximum of result. The get up is neat and excellent. All Law libraries worth the name will find the book indispensable. We earnestly recommend the volume.

Lala Lajpat Rai—*His writings and speeches, 1907. Madras, Ganesh & Co., Thunbu Chetty Street. Pages 274. Price Re. 1.*

The little brochure purports to put before the public and the legal world in particular the life and teachings of the great Punjab Lawyer who has been of late better known as the young Indian Patroit who not resting with merely making his fortune at the Bar has set an example before this countrymen of what service a person can render to his country by his true and ardent genuine patriotism and persevering work on behalf of suffering humanity. The collection of the various speeches, dealing with various questions, educational, economic, religious and political indicates on a glance the man who now stands foremost among his brethren for his Desh Bhakti and devotion to religion. We recommed the little book to all those that have any desire to know of, the Indians and the Indian problems.

Hoe & Co.'s Diary.—The publishers have to be congratulated on the excellent diaries, they continue to bring out every year for the use of professional men. The one for pleaders is excellent.

GOVERNMENT NOTIFICATIONS, H. C CIRCULARS & REVIEWS.

—:0:—

Bombay Notifications.

Post office Act—In exercise of the powers conferred by the Indian Post Office Act, 1898 (VI of 1898) the Governor General in Council is pleased to direct that the following amendment shall be made in the rules published with the notification in the Finance and Commerce Department No. 1429. C. I. R., dated the 30 th March 1899, as subsequently amended.

To rule 132 (1) the following shall be added namely:

Exception.—Nothing in this sub-rule shall affect the practice of the Law Courts in regard to the despatch of 'certified copies to persons who do not appear to take them personally, and of documents filed in judicial cases the return of which has been applied for, such documents may be posted by judicial officers in covers superscribed 'Service unpaid' and covers so superscribed shall be charged, on delivery, with postage at the rates to which they would have been liable if the postage had been prepaid. All articles so posted shall be endorsed under the full signatures and official designation of the sender, according to the specimen form given on the margin.

Service unpaid.	do not appear to take them personally, and of documents
A. B.	filed in judicial cases the return of which has been
Calcutta.	applied for, such documents may be posted by judicial
C. D.	officers in covers superscribed 'Service unpaid' and
Commissioner.	covers so superscribed shall be charged, on delivery,
Gorakhpur.	with postage at the rates to which they would have

been liable if the postage had been prepaid. All articles so posted shall be endorsed under the full signatures and official designation of the sender, according to the specimen form given on the margin.

(Bom. G. G. 1907, p. 2058.)

Bombay High Court Rules.

No. 332—The Honourable the Chief Justice and Judges are pleased to direct that the words ('including the principles of examination in chief cross examination and re examination.) should be added to subject No. 5 after the words "The Law of Evidence." in Rule IX of Circular No. 184 at page III of the High Court Civil Circular Order Book.

(N. B.—This rule will come into force from 1st January 1908.

No. 102—The Honourable the Chief Justice and the Judges are pleased to direct that the following rule be substituted for Rule 544 of the Rules and Forms of the Bombay High Court 2nd Edition, 1907, as Rule 544:—
544. The Taxing Officer shall tax bills of costs on every side of the Court. All other bills of costs of Attorneys shall also be taxed by him when he is directed to do so by a Judge's order.

(1 B. G. G. 1908, p. 152).

REVIEWS.

A treatise on the law relating to the Devolution of Real Estate on death and the Administration of Assets—by the late L. G. Robbins and Frederick T. Maw. Both of Lincoln's Inn. Barristers-at-Law. Fourth Edition by Frederick T. Maw, 1908. London Butterworth & Co. Pages LXVIII, 469, 45. Price Sh. 15 nett.

This treatise deals with the branch of the law which plays a very important part in English law and is the subject of discussion in Home Courts every week. *Mr. Frederick Maw* has brought out the fourth edition of *Robbins'* well-known treatise with considerable alterations and additions to some of the chapters, at the same time keeping the general arrangement of subject matter adopted by *Mr. Robbins* unchanged. He seems to have rewritten almost entirely Chapter 4, and has remodelled Chapter 9. All recent decisions are fully discussed and the book is made exhaustive and up to date. The subject matter is well arranged, the book being divided into 4 parts; the first part deals with the creation of the offices of executor and administrator, and indicates the nature of the trust of administration subject to which the estate of a deceased devolves upon his representation. The second and third parts deal respectively with the administration of the estate in payment of debts and the distribution of the surplus remaining after payment of debts among the beneficiaries and the fourth deals with the liability of the representative. We heartily recommend the edition to law libraries and to the profession.

Law and Practice as to Formation of Companies by Nicholas, of the Middle Temple, Bar-at-Law. Third Edition by Vale Nicolas and W. F. Lawrence, M. A. of the Middle Temple Esqr. Bar-at-Law, London, Butterworth & Co. 1908. Pages 357. Price s. 17. d. 6 nett.

We welcome this the third edition of *Mr. Nicolas'* well known work, which we think is the only one that deals exhaustively with the law as to formation of companies. The scope of the work is very aptly limited to Companies limited by shares, for in these days, the registration of unlimited companies and companies limited by guarantee is very seldom effected. In this handy volume are to be found stated clearly and concisely the law and the procedure in relation to the formation of a company from its very inception until the time at which it becomes entitled to commence business. Besides there are copious references to all the provisions of the Companies Act and the reported cases on the subject. In addition to the prescribed registration forms, *Mr. Nicolas* has with view to help a practitioner who may be called upon to draft a memorandum

or articles of Association give precedents of the same which are bound to serve him by way of illustration. The present edition contains an amount of new matter and embodies among others the text of the new Act of 1907 with explanatory notes, and the Rules of the London Stock Exchange respecting special settlements, and all recent cases relating to the formation of companies. We have no doubt that the book, concise (without being in any way incomplete) as it is bound, to be useful to the profession as also to accountants, directors and all those engaged in the formation of companies.

Principles and Practice of the Law of Libel and Slander—by

Hugh Fraser, M. A. L. L. D. Bar-at-Law of the Inner Temple, London, Butterworth & Co., 1908. Fourth Edition. Pages LV, 353, 56. Price 15 sh.

This is the fourth edition of Dr. Fraser's excellent treatise of the law of Slander and Libel. Though the work does not claim to compete with *Odgers* exhaustive volume, we can say looking to the fact that the book has gone in to four editions so soon and the concise form in which the principles and practice as to this branch of the law are presented that the book has justly found great favour with the profession, and for purposes of ready reference, it has afforded the necessary facility. The law is stated in the form of propositions followed by explanatory notes, in the preparation of which original authorities seem to have been largely consulted. In the present edition no alteration in the plan or general arrangement of the work seems to have been made. Among the special features are the two appendices which contain a lot of useful information as to conduct of civil cases, precedents as to statement of claim, defences, affidavits, &c. The get up is very neat and decent and does credit to the publishers. We strongly recommend the book to the profession.

Student's Guide to Roman Law—(Justinian and Gaius)—By

Dalzell Chalmers of the Inner Temple Bar at Law and L. H. Barnes B.A. of Christ church, Oxford and the Inner Temple—Bar—at-Law. London, Butterworth & Co. Law Publishers 1907, Page 323.—The learned authors are right in their belief that there is a need for a concise and simply worded text book which will serve as an introduction to the standard authorities. The essential principles of Roman Law as they are to be found in the texts of Justinian and Gains, are given in a condensed form; and in addition to this there is a lot of other information which is likely to prove of much assistance to the students.

The clear and straight forward manner in which difficult matters are treated is bound to help the student to master the subject—the more so, because of the way in which the authors have elucidated the Roman Law by comparison with the English rules on the subject; students reading for examination in Roman Law—for the Bar or L. L. B., will find this hand book extremely useful.

The Lawyer's Companion.—Part XVIII By T. V. Sanjiva Rao
Trichinopoly. Madras M. E. Press, 1907.

This part completes the case law on Indian Easements Act and after giving an exhaustive table of cases cited and a complete index proceeds to the Land Acquisition Act. The usual plan is followed; and the excellence of printing and get up is well maintained. The work needs no words at this stage since we have no doubt the profession still appreciates the labours of the indefatigable compiler.

Indian Evidence Act—With the case law thereon—By T. V. Sanjiva Rao—First Grade Pleader. Trichinopoly—Part A. Ps. 1. to 77. Madras India steam Printing Works. 1908.

Mr. Sanjiva Rao is too well known to require any further introduction. He has now directed his attention to annotating in his usual fashion the I. Evidence Act. The present part of 77 pages comprises the first 8 sections only. At that rate it seems the whole Act will make a large volume and then only one can say whether for the price which may possibly be not less than Rs. 8 or so it would be a substitute for the standard works on the subject followed. The plan followed by Mr. Sanjiva Rao is no doubt been acceptable in the case of minor Acts, but we cannot say whether it affords the same facility when Acts like the Evidence Act over which a large quantity of case law has cloistered are concerned: We think the learned compiler would make this case annotated edition more useful if he were to embody English cases and to state under each case whether and where it is judicially noticed. As it is however the edition is likely to be useful to the profession.

GOVERNMENT NOTIFICATIONS, H. C. CIRCULARS & REVIEWS.

—:0:—

Court of Wards, No. 2157.—In exercise of the powers conferred by clause (6) (ii) of section 2 of the Bombay Court of Wards Act, 1905 (Bombay 1 of 1905), the Governor in Council is pleased to declare that the Mewasi Chiefs in the West Khandesh District belong to a class of which the members are land-holders for the purposes of the said Act.

(Bom. G. G. 1908, p. I, p. 288.)

Mewasi Chiefs, No. 2156.—In exercise of the powers conferred by clause (c) of the Bombay Court of Wards Act, 1905 (Bombay 1 of 1905), the Governor in Council is pleased to appoint the Agents to the Mewasi Estates to be the Courts of Wards for the Scheduled District of the Mewasi Chief's villages as defined in the Scheduled District Act, 1874 (XI of 1874), and to direct that the said Scheduled Districts shall be excluded from the jurisdiction of the Court of Wards for the Central Division of the presidency proper.

(Bom. G. G. 1908, p. 288.)

Cattle Trespass Act, No. 2358.—Whereas it appears to the Government in Council on the report of the District Magistrate, Broach, that in the local areas hereinbelow specified, subject to the jurisdiction of the said Magistrate, cattle are habitually allowed to trespass on the land and damage crops and other produce thereon; the Governor in Council is pleased to direct the exercise of the powers conferred upon him by sec. 12 of the Cattle Trespass Act, 1871, as amended by sec. 5 (1) of Act 1 of 1891, that on and after 20th March 1908, for every head of cattle specified in the scale contained in the first mentioned section which may be seized within the said local areas and impounded in accordance with the Cattle Trespass Act, 1871, as amended by Act 1 of 1891, The pound keeper shall levy a fine equal to double the fine mentioned in the scale aforesaid.

2. And in exercise of the power conferred by sec. 26 of the Cattle Trespass Act, 1871, as amended by Act 1 of 1891, the Governor in Council is pleased to direct that, with respect to the local areas hereinbelow specified, the first paragraph of the said sec. 26 of the Cattle Trespass Act 1871, shall, on and after the date specified in the first paragraph of this notification, be read as if it had reference to cattle of any kind mentioned in the scale aforesaid instead of to pigs only, and as if the words "fifty rupees" were substituted for the words "ten rupees."

Local areas above referred to.

The villages of Ankleswar and Chorasi and the lands within the Municipal limits of Ankleshvar.

(1908, Bom. G. G. 321.)

Government Notifications

Record of Rights, No. 2174.—In exercise of the powers conferred by sub-section (3) of sec. 1 of the Bombay Land Records of Rights Act, 1903, (Bom. IV of 1903), the Governor in Council is pleased to direct that the provisions of sections 10 to 12 (both inclusive) of the said Act shall be applied to all the villages of Yaval Taluka of the East Khandesh District from the 5th day of May. (Bom. G. G. 1908, p. 288)

Stamp Act, Art 53.—In exercise of the powers conferred by the I. Stamp Act the G. G. in Council is pleased to remit the duty chargeable under article 53, sch 1 of the said Act on receipts for advances exceeding Rs. 20 made by the Government under the Agriculturists Loans Act 12 of 1884. (Bom. G. G. 1908, p. 360.)

REVIEWS.

The Law and Practice of Divorce.—By G. L. Hardy of the Inner Temple, London, Effingham Wilson, 1907, pages XX, 209, Price 5 sh. Mr. Hardy deserves much of the junior members of the profession and English Law Students particularly for his labours on their behalf which have resulted in the book before us which we must say is a succinct and cheap text book on the law and practice of Divorce and other matrimonial cases. It does not claim to be a substitute for existing standard works, the latter we are afraid however are for too expensive and not within the reach of every practitioner and thus a wide felt need for a concise but in expensive book on the subject was naturally felt, and that we are glad to be able to say is successfully supplied by Mr. Hardy's excellent edition. Without causing any confusion the author has in terse language given statements of law, fortified by extracts from authorities where necessary. The Subject is divided into two parts *first* part dealing with law and the *second* with practice, which seems also is a most useful guide to a lay man. The book is bound to serve as a handy referencer even to advanced practitioner. The index is full and copious and the table of cases is fairly exhaustive for ordinary purposes.

Epitome of the Law affecting Marine Insurance.—By Lawrence Duckworth of the Middle Temple, Bar-at-Law, London, Effingham Wilson 54 Thread needle street, 1907, 2nd Edition Pages XI, 186, Price 3 s. 6 d. nett. Those desirous of having clear notions of the elementary principles of Marine Insurance will find this epitome very useful and interesting. The subject is treated in very simple language with reference to decided cases. The present edition embodies in an Appendix the Marine Insurance Act of 1906 and also the latest decisions of the House of Lords are given in a separate chapter. Above all the index very exhaustive. We recommend the little book to all those that are concerned as attorneys, underwriters or ship owners with Marine Insurance.

Part VIII.

GOVERNMENT NOTIFICATIONS, H. C CIRCULARS & REVIEWS.

—:—

Government Notifications.

Abkari, No. 2045—In exercise of the powers conferred by sec. 9 and 19 of the Bombay Abkari Act, 1878 (Bom. V of 1878) the Governor in Council is pleased to amend Government notification in the Revenue Department No. 9207, dated the 13th November 1894, as amended by the like notifications No. 8292 dated the 11th October 1905, and No. 1389, by directing that the rate of duty leviable on sale, beer, porter, cider and other fermented liquors per Imperial gallon or six quart bottles shall, with effect from the 3rd January 1908, be two annas instead of one anna, as specified in the table contained in the said notification. (Bom G G. 1908, Part 1)

H. C. Circulars.

Pleader's Examination, No. 40—The Honourable the Chief Justice and Judges are pleased to direct that the following be added at the end of note to rule III of the Pleader's Examination rules under Circular No. 184 at page 110 of the High Court Circular Order Book:—

“ The application must actually reach the Registrar's Office before the beginning of the examination. ” (Bom. G. G. 1908)

—————**No. 439**—The Honourable the Chief Justice and Judges are pleased to direct that the following be added at the end of Note III to paragraph 111 of Rule 9 at page 80 of the Rules of the Bombay High Court, edition of 1907.

“ The application must actually reach the Registrar's office before the beginning of the examination. ”

Holidays in Karwar, No. 478—The Honourable, the Chief Justice and Judges are pleased to direct that the following be added at the end of Circular No. 170 at page 104 of the High Court Civil Circular Order Book:—

“ Note 9.—In lieu of the five holidays for Holi, mentioned in the third column of the table of holidays, three days for Holi, one day proceeding Ganesh Chaturthi, and one day following Ganesh Chaturthi will be observed as holidays in the District Court of Karwar and the Subordinate Courts of Karwar and Honavar in the Karwar District. (Bom. G. G. 1908)

REVIEWS.

Bostwick's Lawyers Manual.—By Charles F. Bostwick of the New York Bar. 1907. The “ Lawyers ” Co-operative Publishing Co. New York, N. S. A. pages XXI, 743. This seems to be an excellent Desk

Book for all Lawyers containing as it does all handy forms, suggestions letters, hints on appeal procedure and a lot of other useful information. Mr. Bostwick's book is well fitted to be a mechanical aid in routine work and its presence on a busy lawyer's table is bound to ensure him not only against costly mistakes but against a waste of time which is otherwise the consequence of one having to recollect every necessary question and take instruction thereon &c. The forms given are those such as every Lawyer is expected to be familiar with. Though the book relates to American Practice it can be safely read by Indian Lawyers with great advantage. It is to be hoped that an experienced Indian Lawyer would at no distant date, take up a publication like Mr. Bostwick's Manual in reference to Indian Courts practice. The book is well got up and we very strongly recommend it to the profession.

A Practical Guide to the Death Duties.—By Charles Batty, *Solicitor of the Estate Duty Office, 1907. Second Edition London Effingham Wilson, pages XII, 232. Price 4 s. Nett.* Mr. Beatty's object in this small handbook seems to be to outline all the death duties, enlarging upon such points as most frequently arise, and a cursory perusal has satisfied us that the book is bound to serve as a practical guide to the Death Duties matters and to the preparation of Death Duty accounts. The book reflects the result of the long experience of Mr. Beatty in his official capacity as an examiner of accounts at the Estate Duty Office. The appendix covering a space of 30 pages is one of the special features. It embodies the English Finance Acts from 1894 to 1907, the Revenue Act of 1903 and the Deceased Wife's Sister's Marriage Act of 1907, so far as relating to the Death Duties. The forms are numerous and we have no doubt this hand book will be a very useful guide to every laymen and practitioner.

The Magistrate's Court Manual—By P. C. Chatterji, *B. A., of the Provincial Service, Calcutta. R. Cambray & Co., 1907, pages XVIII, 309, Price Rs. 4* This appears to us to be a book meant more for those presiding in Criminal Courts than the practitioners there. It embodies 230 sections of the Criminal P. Code which apply to Magistrates Courts and contains besides the rules relating to appointment and promotion, protection and removal of Magistral officers and Government and High Court Rules and Circular orders. Magistrates will also find herein the rules as to practice in their Courts and registers and returns to be submitted. The introduction is full and comprehensive tracing the history of the long mooted question of the separation of the judicial and executive functions. The notes on the provisions of the Criminal Procedure Code are fairly up to date and critical. We draw the attention of officers presiding in Criminal Courts to this handy manual.

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:0:—

Government Notifications.

Opium Act No. 4536—Under section 12 of the Opium Act, 1878 (1 of 1878), the Governor in Council is pleased to authorise the Collector of Customs, Bombay, in right of his office to exercise the powers specified in paragraph 3 of the said section within the limits of his jurisdiction so far as regards any opium or other thing seized by himself or by any officer subordinate to him. (G. G. 1908; 632).

Record of Rights No. 4468—In exercise of the powers conferred by sub-section (3) of section 1 of the Bombay Land Record of Rights Act, 1903 (Bom. IV of 1903), the Governor in Council is pleased to direct that the provisions of sections 10 to 12 (both inclusive) of the said Act shall be applied to all the villages in the Ron Taluka of the Dharwar District from the 7th day of July 1908. (B. G. G. 1908. 631).

—No. 4501.—In exercise of the powers conferred by sub-section (3) of section 1 of the Bombay Land Record of Rights Act, 1903 (Bom. IV of 1903), the Governor in Council is pleased to direct that the provisions of sections 10 to 12 (both inclusive) of the said Act shall be applied to all the villages of the Dharwar Taluka of the Thana District from the 7th day of July 1908. (ibid)

L. R. Code No. 4517—In exercise of the powers conferred by section 216 of the Bombay Land Revenue Code, 1879, the Governor in Council is pleased to authorise the extension of the provisions of Chapter VIII and IX of the said Code to the village of Majigam in the Chikhli Taluka of the Surat District. (G. G. 1908. 631).

Nasik Municipality No. 1921.—In exercise of the power conferred by sub-section (3) of section 1 of the Municipal servant Act, His Excellency the Governor in Council is pleased to extend, on and from the 1st June 1908, to the Municipal District of Nasik the provisions of the said Act so far as they relate to persons employed by or on behalf of the Municipality of Nasik to perform any of the duties specified in classes 1 and II of the schedule attached to the said act. (B. G. G 1908 p. 459)

No. 4602.—In exercise of the powers conferred by section 22 of the Bombay Land Revenue Code, 1870 (Bom. 5 of 1849), the Governor in Council is pleased to modify clause (b) of paragraph 2 of Government Notification in the Revenue Department, No. 9159, dated the 18th November 1896, by directing that the diameter of the seal of Huzur Treasury Officers shall be one inch instead of one and a half inchs.

(B. G. G 1908, p. 559)

Honorary Presidency Magistrates.—No. 1653.—In exercise of the powers conferred by sec. 21 of the Criminal Procedure, 1898, and in superession of Government Notification No. 3801, dated the 29th July 1905), the Chief Presidency Magistrate, Bombay with the previous sanction of the Governor in Council, makes the following rule in substitution for rule 7 of the Rules for the guidance of the Benches of Honorary Presidency Magistrates, Bombay. Promulgated with Government Notification No. 2536, dated the 19th May 1904!—

(7) “ In order to form a quorum atleast two Magistrates shall be present from the beginning to the end of trial or enquiry as members of the Bench:—

Provided that, if a salaried Presidency Magistrate be present throughout a trial or enquiry as president, the case may be proceeded with to its conclusion notwithstanding that a quorum may not have been present throughout the proceedings.

(G. G. (1908) 468)

High Court Circulars.

Service of Process by Bailiffs.—The Honourable, the Chief Justice and Judges are pleased to direct that in the Bailiff's Process Service and Receipt Book (page 134, High Court Civil Order Book), column 9. should have two sub holidays, namely (1) served without the aid of a party, and (2) served with such aid.

No. 1058.—The Honourable the Chief Justice and Judges are pleased to direct that the following be substituted for Circular No. 140 at page 76 of the High Court Circulars Order Book:—

140, No Bailiff charged with service of process is entitled to call upon the party interested in the service to point out the person to be served.

It is the duty of the Bailiff to use his best efforts to effect the service and it is only when he fails, in spite of such efforts that the Court may order the party to render help to him.

In cases where the serving officer does not know the individual on whom process is to be served but such individual is pointed out to him, there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served.

(B. G. G. 1908. P. 616.)

REVIEWS.

Handbook of the Law of Evidence—*Second Edition by John Jay Mckelney, A M., LL. B. of the New York Bar, 1907, st. Paul Mum, West Publishing Co., pages XVII, 540, price 3.75 Dollers.*—That the American Hornbook Series of Law hand books is an useful and excellent aid to law student in particular is more than amplified by the second edition of Mackelney's well-known treatise on the Law of Evidence. It relates the principles of the law in a manner easy of comprehension by the student. It avoids the unwieldy details of larger works but at the same time it is free from the meagreness of Stephen's digest. The principles are very clearly stated in bold type and they are illustrated by notes based on reported English and American Cases.

Mizley and Whiteley's Law Dictionary—*Third Edition, By Leonard, H. West LL. D. London, Butterworth & Co. 1908, pages 369. Price 10 Sh. 6 d.*—The fact that Mozley's well-known dictionary for Law students has gone in to third edition so soon *per se* speaks to the useful purposes it serves. It gives an exposition of legal terms and phrases of fact and present use accompanied with an exposition of the law bearing upon the subject matter of the title. The arrangement facilitates reference and gets up is very neat and decent. We earnestly recommend it to those for whom it is meant.

Workman's Compensation Cases—*Vol. 9, By R. M. Minton Senhouse of Bar-at-law, of the Inner Temple and F. J. Coltman, Bar-at-law. London, Butterworth & Co., Bellyard, Temple Bar, 1908, pages XIII p. 151*—This is a collection of cases decided on an important branch of the law. The present volume embodies cases decided between September 1905 and August 07. The reports are taken from the Law Times Reports and Times Law Reports; one of the features of the book is that the compilers have in each headnote supplied a short and succinct statement of the principles discussed in the cases to which he refers. The volumes are likely to be useful to Law Libraries which do not possess reports of English Cases.

The Companies Act—By D. G. Hemmant of the Inner Temple *Bar-at-Law*. With notes on Practice by H. W. Jordan, London, Jordans and Sons Ltd. 116, Chancery Lane, 1908. Fifth Edition, pages 132, price 2 sh. 6 d. This is a handy annotated edition of the New English Companies Act of 1907. The notes appended under each section though short are to the point and up to date and the construction of the provisions of the Companies Act, 1900 is given in its entirety with the sections which are amended or repealed printed in italics. By the cross references between the old and the new Act the effect of the new Act is rendered very intelligible. The book will be found useful by those that have anything to do with the provisions of the Act.

Criminal Appeals (Under Act 6 of 1907)—By A. C. Forster Bowton *M. P. Bar-at-Law*, London, Butterworth & Co, 1908, pages 115. Mr. Bowton has in publishing his edition of the New Criminal Appeals Act, to labour under the difficulty of having no assistance from previous decisions. These all the more enhances the value of his explanatory notes which materially help to lucidate the difficult provisions of the statute. The Act deals merely with English Criminal Courts; but at the same time some of the provisions are salutary and deserve to be embodied in the Indian Statute. The handbook is likely to be useful to Indian readers.

Index of Cases judicially noticed (1907)—By T. S. Subrahmanya Aiydr, B. A., B. L. Kumbakonum, 1908, Re. 1 pages 110. This is the annual supplement to Ayer's Index of Cases for 1905 and 1906 which we have had an occasion to say is a very exhaustive index with special features of its own. Where a case reported in more than one report is judicially noticed it is noted only under one heading, the I. L. R. Series and in the other harding reference is given to the page and volume under where it is noted, Mr. Ayyar has added parts 3 and 4 in which, are now embodied the subject index of leading articles in reports, and of comments on cases in the Law Journals. The supplement is bound to be very useful.

Part VIII

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:O:—

Government Notifications.

Abkari No. 3125.—In exercise of the power conferred by sec. 19 of the Bom. Abkari Act 1878 (Bom. V of 1878), and in supersession of Government Notification in the Revenue Department No. 9244, dated the 27th December 1890, published at page 10 of the Bom G. G. dated the 1st January 1891, the Governor in Council is pleased to direct that, with effect from the 3rd January 1908, a duty at the rate of two aunas per Imperial gallon or six quart bottles shall be levied on all ale, beer, porter, cider and other fermented liquors issued from any brewery established in the Bombay Presidency or permitted to be imported into any part of the Presidency of Bombay under the provisions of sec. 9, clause (c), of the said Act.

(1908) Bom. G. G. 426.

Land Record of Rights No. 3009—In exercise of the powers conferred by sub-section (3) of sec. 1 of the Bombay Land Record of Rights Act. 1903 (Bom. IV of 1903), the Governor in Council is pleased to direct that the provisions of sections 10 to 12 (both inclusive) of the said act shall be applied to all the villages of the Junnar Taluka of the Poona District from the 26th day of May 1908.

(1908) Bom. G. G. 418.

REVIEWS.

Real Property.—By *Alfred F. Topham, L. L. M. of Lincoln's Inn Bar-at-Law. London Butterworth & Co. Bell yard. Temple Bar 1908. Pages 359 Price. 7 s. 6 d.*

This is more a student's book being an introductory explanation in simple but excellent language of the English law relating to land:—Mr. Topham is well fitted for the task being himself a reader in that branch of the law to the council of legal education. A cursory perusal has satisfied us that the principles are very clearly traced and explained in the light of recent reported cases and what is more, the difficult rules are made simpler and easy to grasp by frequent illustrations. Mr. Topham's book is bound to serve as an excellent introduction to the study of larger works on the subject the manner of treatment, lucid and analytical, is likely to interest even Indian students. We cordially recommend the edition.

Outlines of Medical Jurisprudence for India.—By *Lieut Col. P. Hebir, I. M. S. M. D. F. R. C. P. F. R. C. S. D. P. H. and the late*

J. D. B. Gribble. I. C. S. 1908. Fifth Edition. Madras. Higginbotham & Co. Pages XXXI 709.

Dr. Hebir's edition of Medical Jurisprudence is too well known to require any words at this stage: An examination of the contents makes it patent that the book is more exhaustive than its very modest title would lead one to suppose. There are no mere outlines of Medical Jurisprudence. The work is more in the nature of a handy treatise on the subject likely to be useful not only to medical men but to legal practitioners as well. This is the latest book we know of and as such possesses this advantage viz. that it embodies all that is useful in the medico legal records of the past quinquennium, Dr. Hebir's book would be a good companion reader to standard works of Taylor and Chevers. We recommend it to all Law Libraries.

The Indian Evidence Act.—With commentaries by Janaki Nath Pal B. L. and Saratchandra Sanyal M. A. B L. Vabils of the Calcutta High Court, Calcutta Law Publishing Press. Bow Street, 1908, Pages 411 Price Rs. 3.

This is a welcome addition to the existing commentaries on the Act. The sections of the Act are all collected together and printed in one place and the commentaries explaining and elucidating the several sections, and the ratio decidendi of judicial decisions are printed in the other part. This is as the learned authors say with a view to alliviate the difficulties daily experienced by busy practitioners and to make it useful as a book for ready reference. The little book before us brings within a small compass the practical as well as the theoretical law on the subject, and in no way lays claim to be a rival of other standard works. We wish the notes were arranged under each section so as to help the student the more. However as it is, it is likely to be useful to those for whom it is meant.

The Diseases of Workmen.—By T. Lusson M. A. and R. Hyde M.R. O. S. London. Butterworth & Co Bell yard, Temple Bar. 1908. Pages 111.

This is a handy book of reference dealing particularly with certain industrial diseases contracted by workmen in the course of their employment. It is likely to be useful to those that are interested in the action and application of the Workmen's Compensation Act of 1906, In addition to the list of diseases, their description, symptoms and characteristics, there is an excellent introduction from the pen of His Honour Judge Rengg K. C. which elucidates the provisions of the Act & is wellworth a perusal.

Part VIII

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:—

Government Notifications.

—

Cantonment Code (Amendments).

In exercise of the powers conferred by sections 25 and 26 of the Cantonments Act, 1889 (XIII of 1889), and in modification of the Notification of the Government of India in the Military Department, No. 664,* dated the 16th June 1899, as subsequently amended, the Governor-General in Council is pleased to direct that the following amendments shall be made in the Cantonment Code, 1899, namely:—

1. In *section 2, sub section (1), clause (m)*, for the words 'meat, fish, fruit, vegetables, milk or any other perishable, the word 'any' shall be substituted.

2. To *section 4* the following shall be added, namely :
'and may similarly revoke any appointment so made.'

3. In *section 21* the third proviso is hereby cancelled.

4. To *section 23* the following shall be added, namely :

'*Explanation*—In this section the word "sweeper" includes any menial employed by the cantonment authority in the removal or disposal of filth or rubbish.'

5. In *section 29, sub section (1)*, after clause (a), the following shall be inserted, namely :

'(b) the payment of such allowances to officers performing the duties of Cantonment Magistrates, as the Commander-in-Chief in India, with the concurrence of the Local Government, may determine.'

6. In *section 36, sub-section (2), clause (a), sub clauses (i) and (ii)*, for the words 'one hundred rupees' where they occur the words 'five hundred rupees' shall be substituted.

7. In *section 66*—

(a) in *clause (a)* after sub-clause (xiv) the following shall be inserted, namely :

- (xv) carries nightsoil or other offensive matter or rubbish at hours, or by roads, prohibited by the cantonment authority by public notice, or in any pattern of cart or receptacle which has not been approved for the purpose by the cantonment authority, or who fails to close such cart or receptacle, when in use;'
- (b) in *clause (c)* after the words 'deposits, or permits his servant to deposit,' the words 'earth or materials of any description or' shall be inserted; and
- (c) for *clause (k)* the following shall be substituted, namely:
- '(k) discharges fire-arms or lets off fire works or fire-balloons, or flies kites, or engages in any game, in such a manner as to cause or be likely to cause danger or annoyance to persons passing by or dwelling by or working in the neighbourhood, or risk of injury to property.'

8. For *section 75* the following shall be substituted, namely:

76. Cesspools, receptacles for filth etc.—The Cantonment Magistrate may by notice in writing,—

- (a) require any person having the control, whether as owner, lessee or occupier, of any land or building—
- (i) to close any offensive cesspool belonging to the land or building, or
 - (ii) to provide a receptacle (of a pattern, if any, approved of by the cantonment authority) for filth or sullage water accumulating on or in the land or building, or
 - (iii) to keep in a cleanly condition (in such manner, if any, as may be prescribed by the notice), any receptacle provided for such filth, or
 - (iv) to prevent the wathr of any private latrine, urinal, sink or bathroom, or any other offensive matter, from soaking draining, flowing or being put from the land or building upon any street or public place or into any water-course or into any drain not intended for the purpose; or
- (b) require any person who has the control, whether as owner, lessee or occupier, of any land or building, and has allowed any offensive matter or rubbish to accumulate or remain thereon or therein, to collect the same and deposit it, for removal by the public conservancy establishment, at such times and in such receptacles or places situate at not more than one hundred feet from the nearest bound-

dary of the premises, as may be specified in the notice ; or

(c) require any person to desist from making or altering any drain leading into a public drain ; or

(d) require any person who is creating or likely to create a nuisance by—

(i) altering, obstructing or encroaching upon a public drain, or

(ii) impeding the flow of water owing to the absence of a culvert or the existence of an insufficient culvert under a path leading to his premises,

to desist therefrom; or

(e) require any person having the control of a drain to remove, within a period to be specified in the notice, any obstruction from the same, or to cleanse, purify, repair or alter the same or otherwise put it in good order; or

(f) require any person, being the owner or having the control of any well, to disinfect or otherwise purify the same or protect it against contamination, in such manner and within such period as may be specified in the notice.

76A. Private latrines.—The cantonment authority may, be notice in writing.—

(a) require the owner or other person having the control of any private latrine or urinal not to put the same to public use; or

(b) where any plan for the construction of private latrines or urinals has been approved of by the cantonment authority and copies thereof may be obtained free of charge on application,—

(i) require any person repairing or constructing a private latrine or urinal not to allow the same to be used until it has been inspected by or under the direction of the Cantonment Magistrate and approved of by him as conforming with that plan, or

(ii) require any person having the control of a private latrine or urinal to rebuild or alter the same in accordance with that plan ; or

(c) require the owner or other person having the control of any private latrine or urinal which, in the opinion of the cantonment authority, creates a nuisance, to remove the latrine or urinal, and to substitute fresh earth, to such a depth, not exceeding two feet, as may

be specified in the notice, for the earth on which the latrine or urinal stood: or

(d) require any person having the control, whether as owner, lessee or occupier, of any land or building,—

(i) to have any latrine provided for the same shut out by a sufficient roof and wall or fence from the view of persons passing by or dwelling or working in the neighbourhood, or

(ii) to cleanse with deodorants any latrine or urinal belonging to the land or building; or,

(e) where any land or building is situate within one hundred feet of a public drain or other place set apart for the discharge of drainage and the drains belonging to the land or building are, in the opinion of the cantonment authority, insufficient, require any person having control of the land or building, whether as owner or lessee, or, in the case of neighbouring lands or buildings, the several lessees or owners having control of the lands or buildings conjointly, to provide sufficient drainage within fifteen days from the service of the notice; or

(f) require any person who is constructing or laying a drain, to obey any directions which the cantonment authority may, on the advice of the Executive Engineer, think fit to give in order to ensure the completion of the work to its satisfaction; or

(g) require any person, being the owner and having the control of any drain, to provide and apply to the same, within ten days from the service of the notice, such covering as may be specified in the notice.

9. In *section 78, sub-section (1)*, after the word 'filth' the words 'or sullage water' shall be inserted.

10. In *section 84*, for the words 'cantonment authority' the words 'Cantonment Magistrate' and for the words 'appears to it' the words 'appears to him' shall be substituted.

11. After *section 86* the following shall be inserted, namely:

'86A. *Temporary occupation of street, land, etc.* The cantonment authority may, by order in writing, permit the temporary occupation of any street, or land vested in it for the purpose of depositing any building materials, or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of persons passing by or dwelling in the neighbourhood, and may charge

fees for such permission, and may, in its discretion, withdraw the permission. '

12. In *section 89, Sub-section (1)*,—

(a) for clauses (c) and (d) the following shall be substituted, namely:—

' (c) the ventilation of the building, the minimum cubic area of the rooms, and the number and height of the storeys of which the building may consist ;

' (d) the provision and position of drains, latrines, urinals cesspools or other receptacles for filth ' ;

(b) the word ' and ' at the end of *clause (e)* shall be omitted ; and

(c) after *clause (f)* the following shall be inserted, namely :—

' and

(g) the means to be provided for egress from the building in case of fire. '

13. In *section 94*,—

(a) After the words ' or in any way dangerous ' the words ' either, in the case of an occupied building to the occupier or to the public ' shall be inserted ; and

(b) for the words ' for the public safety ' the words ' for the safety of the occupier or of the public ' shall be substituted.

14. In *sections 95 and 97*, for the words ' cantonment authority ' where they occur the words ' Cantonment Magistrate ' shall be substituted.

15. In *section 98*, for the words ' Officer Commanding the Division ' the words ' Commander-in-Chief in India ' shall be substituted.

16. In *section 100*, the words ' and to remove any dead trees from such land ' shall be added to *clause (b)*.

17. In *section 102*,—

(a) for the words ' cantonment authority ' the words ' Cantonment Magistrate ' shall be substituted ; and

(b) at the end of the section the following shall be added, namely :—

' and may require him by notice in writing to restore the land to the condition it was in previous to such improper use :

Provided that, where such use of the land has continued for thirty days, the owner, lessee or occupier shall not be required so to restore the land to its previous condition. '

18. In *section 103*, the word ' grass ' shall be omitted,

19. In *section 105, sub-section (1), clause (a)*, for the words 'the officer in charge of the police-station within the jurisdiction of which the sarai is situated' the words 'the Cantonment Magistrate' shall be substituted.

20. In *sections 114 and 124*, for the words 'free of charge' where they occur the words 'on payment of the prescribed fee, if any,' shall be substituted.

21. In *section 136*, for the words 'cantonment authority' the words 'Cantonment Magistrate' shall be substituted.

22. In *section 137*, after the word 'lamp' the words 'placed on the right side thereof' shall be inserted.

23. In *section 167*,—

(a) to *clause (e)* the following shall be added, namely :—

'and makers or sellers of ghi ;'

(b) after *clause (p)* the following shall be inserted, namely :—

'(q) sellers of wheat, rice and other grains, or flour used as human food ;

(r) makers or sellers of sugar or sweetmeats ;

(s) hawkers and pedlers ; and

(c) for the *second proviso* the following shall be substituted, namely:—

'Provided, secondly, that such fee shall be payable for the grant of the license as the cantonment authority may fix.'

24. In *section 168*,—

(a) after the words 'trade, calling or occupation' the following shall be inserted, namely :—

'and may regulate the hours and manner of transport within the cantonment of any specified articles intended for human consumption' ;

(b) in *clause (e)*, after the word 'buttermen' the words 'and sellers of ghi' shall be inserted ;

(c) for *clause (f)* the following shall be substituted, namely:—

'(f) in the case of makers of bread, biscuits, cake or sweetmeats and sellers of bread, biscuits or cake made in India or sweetmeats ; and

(d) in sub-clause (ii) of the same clause, after the word 'cake' the words 'or sweetmeats' shall be inserted,

25. In section 185, for the words 'officer in charge of the nearest police-station in the cantonment' the words 'Cantonment Magistrate' shall be substituted.

26. In section 193, for the words 'cantonment authority' the words 'Cantonment Magistrate' shall be substituted.

27. To section 204 the following shall be added, namely:—

'(3) No person who has been prohibited under sub-section (1) from remaining in or re-entering any cantonment, shall enter any other cantonment in British India without the written permission of the Commanding Officer in that cantonment.'

28. In section 206, sub-section (1), for the words 'cholera hospital or cholera camp' the words 'hospital or segregation camp' shall be substituted.

29. In section 219, after the word 'authority' the following shall be inserted, namely:— 'or without payment of such fees as the cantonment authority may fix in that behalf.'

30. In section 226, to sub-section (1) the words 'in writing' shall be added.

31. In section 235, for sub-section (2) the following shall be substituted, namely:—

'(2) Any money claimable by the cantonment authority under this Code, otherwise than on account of a tax, may be recovered on application to a Magistrate having jurisdiction within the limits of the cantonment, or in any other place where the person from whom the money is claimable may for the time being be resident, by distress or sale of any moveable property within the limits of his jurisdiction belonging to such person.

(3) When money is recoverable from the owner of property, it shall, until it is paid, be a charge on the property.'

32. After section 238 the following shall be inserted, namely:—

238 A. Execution of work in cases of emergency—In cases of emergency the Cantonment Magistrate may direct the execution of any work or the doing of any act which the cantonment authority is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the service or safety of the public, and may direct that the expense of executing such work shall be paid from the cantonment fund:

Provided that—

- (a) he shall not act under this section in contravention of any order of the committee, and
- (b) every direction given under this section shall be reported to the next following meeting of the committee.

Cantonments Act No. 3332.—Under the provisions of section 2 of Act V of 1868, the Governor in Council is pleased, with the previous consent of the Governor General in Council, to delegate to the Commissioner in Sind the powers conferred by section 7 of the Cantonments Act, 1889 (XIII of 1889), on the Governor in Council.

Part I B. G. G. P. I. 918.

Public Conveyances Act No 3328.—In exercise of the power conferred on him by Section 34 of Bombay Act VI of 1863 (an Act for the regulation of public conveyances, etc.), and in modification of Government Notification No. 2178, dated the 22nd April 1903, the Governor in Council is pleased to direct that, in respect of cases arising within the Municipal limits of Dhulia, the Magistrate to exercise the powers conferred by the said Act on Magistrates of Police in Bombay shall be the Huzur Deputy Collector and Magistrate, or in his absence, the Awalkarkun and Magistrate, Dhulia.

B. G. G. P. I., 918.

Part VIII

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:—

Government Notifications.

Cantonment Act (Nagar) No. 5648.—In exercise of the powers conferred by S. 17 of the Act the Governor in Council is pleased to impose the following tax in the cantonment of Ahmednagar with effect from 1st October 1908 :—

A tax at the rate of one rupee per quarter on every bicycle kept for use and on every dog over two months of age kept with in the limits of the Cantonment.

Provided that.

(1) (a) Bicycles and dogs kept by warrant or non-commissioned officers or soldiers of His Majesty's Regular Forces and,

(b) Bicycles kept by subaltern officers and by bicycle orderlies shall be entirely exempt from the said tax.

(2) Bicycles and dogs kept.

(a) For a period not exceeding fifteen days in any quarter shall be exempt from the tax leviable for such quarter and,

(b) For a period exceeding fifteen days but not exceeding thirty days in any quarter shall be liable to one-third only of the tax leviable for such quarter.

Provided also that any bicycle which has not been used in any quarter due notice of which has been given to the Cantonment Magistrate under the rules for the time being in force for the assessment and recovery of the said tax shall be exempt from the tax leviable for such quarter.

(B. G. G. 1908. 1480.)

Bombay Motor Vehicles Act. No 4490.—In exercise of the powers conferred by section 10 of the Bombay Motor-vehicles Act, 1904 (Bombay II of 1904), the Governor in Council is pleased to amend the Motor-vehicles Rules, 1906, as follows, namely:—

1. In rule 1, sub rule (3), after clause (h), the following shall be inserted:—

“(i) *Width.*—The expression ‘width,’ in relation to the tire of a wheel, means the distance measured horizontally and in a straight line across the circumference of the wheel and between the two points in the outer surface of the tyre which are farthest apart.

(j) *Diameter.*—The expression ‘diameter,’ in relation to a wheel,

means the diameter measured between the two opposite points in the outer surface of the tyre which are farthest apart."

2. To rule 18 the following shall be added:—

"This rule shall not apply to trailers not exceeding one ton in weight unladen."

3. To rule 20 the following proviso shall be added:—

"Provided also that, if the tire is constructed of separate plates the plates may be separated by parallel spaces which shall be disposed throughout the outer surface of the tire, so that nowhere shall the aggregate extent of the space or spaces in the course of a straight line drawn horizontally across the circumference of the wheel exceed one-eighth part of the width of the tire."

4. For rule 21, the following shall be substituted:—

"(1) The width of the tire of each wheel of a heavy motor car or trailer shall be determined by such of the following conditions as may apply to the circumstances of the case; that is to say.—

(a) The width shall in every case be not less than 5 inches, or in the case of a trailer 3 inches.

(b) The width shall be not less than that number of half inches which is equal to the number of units of registered axle-weight of the axle to which the wheel is attached.

The unit of registered axle-weight shall vary according to the diameter of the wheel, and the rules set forth in the sub-joined scale; that is to say.—

(i) if the wheel is 3 feet in diameter, the unit of registered axle-weight shall be $7\frac{1}{2}$ cwts;

(ii) if the wheel is 3 feet in diameter, the unit of registered axle-weight shall be $7\frac{1}{2}$ cwts; with an addition of weight in the proportion of one hundred weight for every 12 inches by which the diameter is increased beyond 3 feet; and in the same proportion for any increase which is greater or less than 12 inches; and

(iii) if the wheel is less than 3 feet in diameter, the unit of registered axle-weight shall be $7\frac{1}{2}$ cwts, with a deduction of weight in the proportion of one hundredweight for every 6 inches by which the diameter is reduced below 3 feet; and in the same proportion for any reduction which is greater or less than 6 inches.

(2) This rule shall not apply to any tire which is pneumatic or which

is made of a soft or elastic material, or to trailers not exceeding one ton in weight unladen."

Sea Customs Act.—In exercise of the powers conferred by section 19 of the Sea Customs Act 1878 (VIII of 1878,) the Governor General in Council is pleased to prohibit the export by sea of Malwa Opium from the Port of Bombay until the 1st January 1909. (B. G. G. 1908 P. 1368 A).

District Police Act. No. 4872.—In exercise of the powers conferred by section 1 of Act V of 1868 the Governor in Council is pleased to delegate to the Commissioner in Sind the powers conferred on the said Governor in Council as the Local Government of the Province of Sind by section 6 of the Bombay District Police Act 1890, (Bombay IV of 1890) of appointing and of transferring Assistant Superintendents of Police from one district to another in the province of Sind. (B. G. G. P. 1448.)

Land Revenue Code (Commissioner in Sind) No. 9291.—In exercise of the powers conferred by section 1 of Act V of 1868, the Governor in Council is pleased to delegate to the Commissioner in Sind the powers conferred on the said Governor in Council as the Local Government of the Province of Sind by section 9 of the Bombay Land Revenue Code 1879 (Bombay V of 1879.) (B. G. G. P. 1446.)

High Court Rules. (Original Side).

No. 479.—The Honourable the Chief Justice and the Judges are pleased to direct that the following amendment in the Table of fees be substituted for line 26 at page 389 of the Rules and Forms of the Bombay High Court 2nd Edition 1907.

	Rs. a. p.
Every engrossment or fair copy per folio of 72 words whether written or typed.	0—4—0
Every second and third engrossment or fair copy per folio of 72 words when struck simultaneously by any process.	0—3—6
Every subsequent engrossment or fair copy per folio of 72 words when struck simultaneously by any process.	0—1—0
Where typed copies are made independently of each other for every folio 72 words.	0—4—0

(B. G. G. 1908 P. 1391).

(Appellate side)

(Translations) No. 2066.—The Honourable the Chief Justice and Judges of His Majesty's High Court of Judicature at Bombay are pleased to direct that the following be substituted for Rule 40 at pages 429 and 430 of the Rules of the Bombay High Court:—

40 (1) All documents referred to in the judgement under Appeal in First appeals, all documents which may have to be construed by the courts in Second appeals, and all those to which the pleaders concerned may wish to refer at the hearing in either first or second appeal should be translated. In cases where there has not been previous reason to believe that a document would be specifically referred to at the hearing but it is found necessary to refer to it, the court may allow it to be translated in Court.

(2) Subject to such check as may be exercised by the Registrar, each party will if he so wishes, be furnished by the office free of charge with translations of documents to the extent of 40 folios in First Appeals and 20 folios in second appeals. All translations beyond the quantity above specified will be charged for at 8 annas per folio of 90 words and will be made if practicable by the Translator's office, the fees being credited to Government and if not by retired Translators or by such pleaders as may be authorized by the Honourable the Chief Justice. The translations should on no account be delayed either by the Translator's Department or by the private Translators.

(3) Applications for translations should clearly state the number and portions of documents the translation of which is required under para 1 of this rule. Where portions of documents or accounts are required to be translated, they should be initialled. Payment for translators should be made to the Translator's Department within a week after the pleader's receive an intimation from the said Department to pay the translation fees. In default of such payment the Chief Translator should report the matter to the Registrar for orders and the Registrar may extend the time for payment or place the matter before the Court for orders.

(4) When a translation made at the request of a pleader is found by the Court to be unnecessary the costs of making the translation shall be borne by the party whom the pleader represents unless the court otherwise orders. This rule applies to second appeals only.

(5) The cost of translation if any should be shown in the Bill of costs.
(B. G. G. P. 1453.)

REVIEWS.

Butterworths' ten years digest of reported cases, 1898-to 1907—4 Volumes, London; Butterworth & Co., Publishers, 1908.

These volumes include almost every case reported during the years 1898 to 1907 as decided in the English Courts as also cases from Scotland and Ireland. The digest has features of its own. It is not confined to cases reported in the authorised series reported in Times Reporter, Law Times, Law Journal. Justice of the Peace and Irish Reports. Another feature is

the facility with which references may be made from one heading to another. No less than 1000 cases are digested, each in its proper place and where one case deals with more than one subject, it is digested under the several headings. Vol. 4 gives an index of cases that have been judicially noticed i. e., followed and dissented from &c., as also an alphabetical table of the names of the parties. No pain seems to have been spared to render the digest as useful as possible. We have examined in some places and found it accurate and clear. We draw the attention of the profession to this digest.

Duty and Liability of Employers.—By Judge Roberts, and George Wallace M. A. of Lincoln's Inn. Bar-at-Law. Fourth Edition. By the Authors and Arthur H. Graham M. A. of the Middle Temple. London. Butterworth & Co. 12 Bell yard, Temple Bar—1908. LXXXII 1014-120. Price.

This standard treatise of Judge Roberts is now preserved in its fourth edition and requires no reiteration of its merits. The utility of the book is as much to the public as to the employers themselves. The learned authors have explained exhaustively and in due sequence the principles of all the liabilities of an employer for injuries to the person or property in relation to the public generally, to persons whose business brings them there, and persons who are in his service. In a separate chapter is to be found discussed the effect of death on the right of action, and in another the topic of damages. Altogether it is an excellent edition which no employer of labour should be without. It is as it were a cyclopaedia on the subject and we recommend it to Law Libraries.

The Law of Arbitration in India—By Durga Charan Bannerji. B. A. Advocate High Court. N. W. P. Allahabad. Liddel's Printing Works. 1908, Ps. VII, 396. Price Rs. 10.

This is a publication in a book form with necessary additions of a series of learned articles contributed by Mr. Bannerji to the Allahabad Law Journal on the subject of "Arbitration Law" in India. Mr. Bannerji has admirably formulated and discussed the general principles and their application as found in reported Indian and English cases—nay he has even drawn on American cases for the purpose. The Statute law bearing on the subject finds room at the end in the appendices. The subject is divided into fourteen chapters each of which in a plain simple language affords interesting reading. Mr. Bannerji's is no mere digest of cases on the subject. The case law is upto date and his criticism proper. We recommend the book to all law libraries.

Insanity in India.—By Major G. F. W. Ewans. M. D. D. P. H., I. M. S., Superintendent, Punjab Lunatic Asylum, Lahore., 1908., pages XI 547,

This is a medico-legal treatise, the first of its kind in this country. Major Ewans has rendered a great service to the public and medico-legal

profession in general by embodying herein the result of his long experience of the ordinary and criminal insanes of the Punjab. The treatise gives a fairly critical and accurate account of the symptoms and diagnosis of the types of insanity that usually come under notice in India. The book is bound to be of inestimable use to all those that have as medical men to form an opinion as experts in regard to the sanity or insanity of the unfortunates who have committed a wrongful act while suffering from mental disease.

Civil Procedure Code.—1908, with notes.

(i) A commentary by Abul Fazl., M. I. Abbasi, Pleader, Gorakhpur. Lucknow, Anglo Oriental Press, 1908, Ps. *LXXXI*, 846, price Rs. 10.

(ii) Case noted—By Janki Nath Pal, Sastri; B. L. Vakil, High Court Calcutta Law Publishing Press, 1908, Ps. *XXII* 538, Rs. 4.

(iii) With Notes.—By Narhar M Patwardhan B. A., L. L. B., Vakil, High Court Bombay. The Ram Agency, Fort, 1908. Ps. *XVI*, 367, *CX. XXVI*.

Now that the New Code is about to come into force soon i. e., from the 1st January, different gentlemen have begun to come out with their casenoted editions or commentaries on the sections and orders of the Statute. Messrs. Amir Ali and Woodroffe's edition and that of Mr. Justice Ram-pini better known as *O'kenealy's*, are likely to have the field as exhaustive annotations and critical commentaries; but these are forestalled by the 3 editions before us. One by Mr. Abasi of Gorakhpur, the other by Mr. Janki Nath Pal of Calcutta, and the third by Mr. N. M. Patwardhan of the Bombay Bar. Mr. Patwardhan's edition does not lay claim to be either a commentary or an exhaustive case-noted edition. His object seems to be to provide a neat, well printed edition noting the main changes in the language of the Code, which might be useful to those who have to refer to it every now and then in the course of their work. He has also added a few select cases to make it useful to Students. We think Mr. Patwardhan would have done better while avoiding too many cases, to embody a fairly larger number as to the scope and application of the important sections. We trust Mr. Patwardhan will notice this in his subsequent editions and the book will serve the useful purpose it purports to. As to Mr. Pal's casenoted edition, it is good for its price; it is a handy, portable volume in small size, but wanting in arrangement as is required to facilitate reference—the object it is intended to serve. We cannot see our way to approve of the new way of treatment adopted by Mr. Pal, of first giving all the rules in and order and then all the cases bearing thereon. Coming to Mr. Abasi's edition we think it will be useful to the Bar and Bench as a digest of case law on the subject. Notes are accurate and well arranged. Mr. Abasi has been discriminate in the selection of cases which if at all errs on the side of being fairly exhaustive. We recommend this edition to the profession.

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:0:—

Sind Rules.

No. 5757.—In exercise of the powers conferred by section 652 of the Code of Civil Procedure and by section 554 of the Code of Criminal Procedure 1898, the Governor in Council is pleased to sanction the following rules made by the Court of the Judicial Commissioner of Sind :—

1. *Pleader's Clerks in the Court of the Judicial Commissioner of Sind.* Pleader's clerks shall not be recognised as such by any officer of the Court nor be permitted to transact any business on behalf of the pleaders by whom they are employed with the office of the Court unless registered as fit and proper persons to be pleader's clerks and is in the employment of the pleaders, for whom they appear to transact business in the register kept for that purpose by the Registrar under the orders of the Judicial Commissioner.

2. *Forms prescribed for the Court of the Judicial Commissioner of Sind.*—In addition to the forms prescribed by Schedule IV of the Code of Civil Procedure, 1882, and by Schedule V of the Code of Criminal Procedure and where those forms are not applicable recourse shall be had to the forms contained in the appendices to Schedule I of Act V of 1908 and to the forms hereto appended.

Criminal Jurisdiction.

No. 5758.—In exercise of the powers conferred by section 554 of the Code of Criminal Procedure, 1898, the Governor in Council is pleased to sanction the following rules made by the Court of the Judicial Commissioner of Sind :—

I.—Sessions Court Jurisdiction of the Court of the Judicial Commissioner of Sind.—1. Where a Sessions trial is not conducted by the Public Prosecutor or Assistant Public Prosecutor, a written authority shall be filed by the pleader appointed by the District Magistrate.

2. When the accused in a murder trial is certified by the Committing Magistrate to be unable to pay for legal advice and is certified to have been undefended in the Magistrate's Court but not otherwise except for special reasons, a pleader shall be appointed by the Judge to undertake the defence at the cost of Government.

3. The list of jurors shall be prepared, published, and revised each year in the month of January; no one shall be included in the list who does not know English.

4. The original public records shall not ordinarily be admitted in evidence, where certified copies are obtainable and will answer the required purpose. But regard shall be had to privilege from disclosure of official communications and affairs of state.

5. Whenever any person is directed to be released on bail, the Judge shall order such bail to be given before the nazir or before such Magistrate as shall appear proper to the Judge.

6. When a sentence of death has to be carried into execution, the Judge shall make arrangements to secure the attendance there of a first class magistrate or the Superintendent or assistant Superintendent of police and in the warrant shall direct the Superintendent of the prison to execute the sentence in the presence of a First Class Magistrate or the Superintendent or Assistant Superintendent of Police. The date of execution fixed in the warrant shall be at least fourteen days from the date of the order of confirmation of the High Court Bench.

II. High Court Criminal Jurisdiction of the Court—the Judicial Commissioner of Sind.

1. Notice shall be given to the Public Prosecutor of the dates of hearing of all cases submitted for orders or confirmation under sections 307, 374 of the Criminal Procedure Code and to the Public Prosecutor and District Magistrate of the dates of hearing all appeals and revisional applications admitted to a regular hearing by the High Court Bench.

2. When the accused in a murder trial is undefended on a submission for orders or for confirmation under sections 307 or 374 of the Criminal Procedure Code or on an appeal from an acquittal of murder or on an application for revision by enhancement to a sentence of death, a pleader shall be appointed by the Judges to undertake the defence at the cost of Government.

3. Revisional applications shall ordinarily be verified by affidavit and be made within sixty days from the dates of the decisions under objection exclusive of the time required for obtaining copies or within six months from and exclusive of the same time when made by Government.

4. Whenever any person is directed to be realised on bail, the Judge shall order such bail to be given before the nazir or before such Magistrate as shall appear proper to the Judges.

5. Typed and printed copies of the proceedings of the Lower Courts under appeal, reference or revision shall be made in the office as follows.

(1) In criminal ordinary, appeals and in reference under section 37 of the Criminal Procedure Code when admitted to a regular hearing before a Bench, three typed copies of the depositions and documents admitted in evi-

dence or if in vernacular, of their translations for the use of the Public Prosecutor and the Court.

(2) In Criminal ordinary appeals and references under section 307 of the Criminal Procedure Code and in criminal miscellaneous appeals, applications and references when admitted to a regular hearing before a Bench, three typed copies of the judgments or orders under objection or if in vernacular, of their translations and of the memoranda of appeals applications or references for the use of the Public Prosecutor and the Court.

(3) In Criminal appeals, confirmations and references under section 307 of the Criminal Procedure Code, involving sentences of death three typed copies of the magisterial proceedings for the use of the Public Prosecutor and court and one typed copy of the Sessions proceedings or, if in vernacular of their translations and of the memoranda of appeal for the use of the press who print the proceedings and memoranda for the use of the Public Prosecutor and the Court.

The typed and printed copies shall be paged and bound together in the form of paper books; copies of the printed paper books; in matters involving sentence of death shall be supplied to pleaders for the defence as well as to the Public Prosecutor.

(Bom. G. G. 12-11-08 P. 1912.)

Record of Rights. (Rules).

No. 11498—In exercise of the powers conferred by section 3 of Bombay Land Records of Rights Act, 1903, (Bom. IV of 1903), the Governor in Council is pleased to amend the rules under the said Act respectively published in Government Notifications in the Revenue Department, No. 8356, dated the 27th November 1903, and No. 8198 dated the 24th October, 1904, as amended by the like notification No. 9413 dated the 22nd November 1905 by directing that for paragraphs 2 and 2A of the remarks on village Form No. 1 D., the following shall be substituted, namely:—

2. After the record has been completed, then whenever any new subdivision of land or other change takes place, necessitating an alteration in details already recorded in it or in this register columns 2-6 of the entry in the former of the last entry (if any) in the latter must first be copied into the register in black ink. Then in cases in which a change has to be made in these columns the new entry must be written in black ink before the first entry and the authority for making it shown in column 18. The other columns will be filled as follows:—

- (a) Where the mutation involves a change of khatedar, the excision of a khatedars' guardians' name being recorded as such a change.

(1) the whole of the original entry should be recopied in the case of all sub divisions of which the khatedar is also occupant the necessary changes being made in the columns need in the columns affected.

(2) in the case of sub-division of which the khatedar is not occupant, the other columns need not be recopied.

(b) in the case of any other mutation, the whole of the original entry must be recopied subject to the necessary changes being made in the columns affected.

2A. Every new entry must be given a serial number in column 1 which must be shown in column 17 in the original entry in Village Form I. O., and if the mutation had occurred in an entry in this register in column 17 of that entry also and in column 17 of the new entry must be given the serial number of the original entry in Village Form I. O., and the entry (if any) in this register in which the mutation has occurred. Serial number of entries in this register should be distinguished by having the letter D, prefixed to them."

Land Revenue Code (Rules.)

No. 11542.—In exercise of the powers conferred by section 214 of the Bombay Land Revenue Code 1879 (Bom. V of 1879) the Governor in Council is pleased further to amend the Land Revenue Code Rules published in Government Notification in the Revenue Department No. 5223, dated 28th June 1905 by directing that:—

(1) After rule 98 of the said rules the following rule shall be inserted.

<i>Maintenance of boundary strips</i>	}	98 A. (1) Boundary strips shall not be ploughed or sown or otherwise used for cultivation.
---	---	--

(2) The minimum width of boundary strips shall be as follows.

(a) In dry crop lands one cubit.

(b) In rice and garden land half a cubit.

Provided that.

(i) Where the boundaries of such lands are well defined by banks, hedges, or the like, the actual width of the strip, covered by such bank hedge, or the like, shall be sufficient for the purpose of this rule.

(ii) Where the boundary of a survey number is coterminous with the boundary of a native state, the minimum width presented above shall be maintained for the portion of the boundary strip on the British side and.

(iii) Where village boundaries have been defined at the time of survey by double lines of boundary marks, the whole of the intermediate strip shall be maintained as a boundary strip.

(2) For clause (k) of rule 99, the following shall be substituted "(k) any boundary strip which has been ploughed sown or otherwise used for cultivation or the dimensions of which are less than those prescribed by rule 98. A."

No 11559.—In exercise of the power conferred by section 73 A subsection (2) of the Bombay Land Revenue Code 1879 (Bom. V of 1879) the Governor in Council is pleased to exempt from the operation of the said section all Brahmins and Banias (Wanis) holding lands in the villages of the Shirpur Taluka of the West Khandesh District, to which the provisions of the said section were declared to be applicable by Government Notification in the Revenue Department No. 1116. B, dated the 18th February 1902.

(Bom. G. G. 19-1-08. P. 1920.)

Legislative Department—Secretariat—functions—In modification of the orders contained in Government Resolution in the Judicial Department No. 3603, dated the 9th June 1907 the Governor in Council is pleased to direct that in addition to all matters which were formerly disposed of in the Legislative Department of the Secretariat the following matters should be dealt with in the Legal Department of the Secretariat.

(1) The institution and defence of suits and the preferring and defence of appeals and applications, whether civil or Criminal.

(2) The communication of the results of suits, appeals etc. to the officers concerned.

(3) (a) The employment and remuneration of Law officers and special counsel in civil or criminal.

(b) The appointment of and grant of leave to, the Government Pleader in the High Court, the Public Prosecutor for Sind, and District Government Pleaders and Public Prosecutors and their Assistants, and.

(c) The strength and remuneration of the establishments of Government Pleaders.

(4) The amendment publication and distribution of the Law officer's Rules.

(Bom. G. G. 1908 P. 1882.)

High Court Rules.

(Appellate Side).

Execution of decrees in Native States.

No. 2360.—The Honourable the Chief Justice and Judges are pleased to direct that the following notification of the Government of India in the Foreign Department. No. 287. I. A dated the 13th July 1906, may be substituted for the notification No. 4052 I. A. dated the 18th September 1902 ap-

pearing at pages. 55-57 of the Bombay High Court Civil Circular order Book.

Notification of the Government of India in the Foreign Department No. 2877 I. A. dated the 13th July 1906.

In exercise of the powers conferred by section 229 B. of the Code of Civil Procedure (XIV of 1882) and in supersession of the notification of the Government of India in the Foreign Department, No. 4052 I. A. dated the 18th September 1902, the Governor General in Council is pleased to declare that the decree of the undermentioned Civil Courts situate in the territories of Native Princes or states in alliance with His Majesty which have not been established or continued by the authority of the Governor General in Council may be executed British India as if they had been made by the Courts of British India.

Mah'li Kant'la.

Court of the Japtidar of Pethapur.

Rewa Kantha.

Huzur Court of Rajpipla.

Court of the Sar Nyayadhis of Rajpipla.

Sachin (Surat).

Court of the Administrator Sachin.

" " Divan of Sachin.

Janjira (Kolaba).

Court of the Sar Nyayadhis of Janjira.

Kolhapur.

Court of His Highness the Maharaja of Kolhapur, combined Court of the Political Agent, Kolhapur and Southern Maratha Country and His Highness the Maharaja of Kolhapur.

Court of the Chief Judge. Kolhapur.

" Sadar Amin. Kolhapur.

" Munsiff of Shirol.

" Munsiff of Gad Hinglaj.

" Joint officer at Katkol.

" Jaghirdar of Kagal (Junior).

" Munsiff of Kagal (Junior).

" Jaghirdar of Bavda.

" Munsiff of Bavda.

" Jaghirdar of Ichalkaranji.

" Munsiff of Ichalkaranji.

" " Ajra.

" Jaghirdar of Vishalgad.

" Munsiff of Vishalgad.

Southern Maratha Country.

Court of the Chief Miraj (Senior).

" Nyayadhis of Miraj (Senior)

" Administrator of Miraj.

(Junior) Miraj State (Junior).

" Munsiff of Kawtha Miraj State (Junior).

" Munsiff of Gudgeri Miraj State (Junior).

" Munsiff of Kuroli, Miraj State (Junior).

" Sub-Saranjamdar of mhysal.

Akalkot (Sholapur).

Court of the Political Agent, Sholapur.

" Subordinate Judge. Akalkot.

" " Kurla.

Surat Agency.

Court of the Political Agent Surat.

" Assistant Political Agent. Danga.

Savantwadi.

Court of the Political Agent. Savantwadi.

" Chief Judge Savantwadi.

" Nyayadhis of Savantwadi.

" Munsiff of Kudal.

" Small Causes of Vadi.

Savanur (Dharwar).

Court of the Political Agent Dharwar.

No. 2361.—The Honourable the Chief Justice and Judges are pleased to direct that the following entry under the head "Sachin (Surat)" shall be omitted from the list of the Civil Courts specified in the Notification of the Government of India in the Foreign Department, No. 2877 I. A. dated the 13th June 1906, at pages 55-57 of the Bombay High Court Civil Circular order book as substituted by the Supplementary Civil Circular No. 67.

Court of the Administrator. Sachin.

No. 2362.—The Honourable the Chief Justice and Judges are pleased to direct that the following entry under the head "Sachin (Surat)" shall be omitted from the table of Civil Courts specified in appendix A. at pages 210 to 213 of the Bombay High Court Civil Circular order Book.

Court of the Administrator Sachin.

No. 2363.—In supersession of the High Court Notification No. 2190 dated the 9th October 1908 appearing at page 1693 of the Bombay Government Gazette Part 1 of the 15 October 1908 The Honourable the Chief Justice and Judges are pleased to direct that the following be inserted below the entry of Savanur (Dharwar) in the list of the Courts mentioned in the notification of the Government India in the foreign Department No. 2877 I. A. dated the 13th July 1936 appearing at pages. 55-57 of the High Court civil circular order book as substituted by the supplementary Civil Circular. No. 67:—

" Baroda.

Any of the Civil Court situate in the territories of His Highness the Gaekwar of Baroda."

No. 2364.—The Honourable the Chief Justice and Judges are pleased to direct that the following notification No. 1216, dated 11th July 1908 issued by the Paroda Darbar and circulated with Government letter in the Judicial Department No. 5249, dated 8th October 1908, be inserted at the end of circular No. 101 at page 57 of the High Court Civil Circular Order Book.

The decrees passed by the Civil Courts of British India, if received in the Baroda territory for execution shall be executed by the Civil Courts of the Baroda State as if the same had been made by themselves as a tentative measure for a period of six years. (Bom. G. G. 1908 P. 1899.)

REVIEWS.

Hindu Family Law—By *E. J. Trevelyn, D. C. L., Bar-at-Law, Fellow of the Souls College, Oxford, Late a Judge of the High Court at Calcutta. Thacker, Spink & Co., 1908 EXIN. 392. Price Rs 16.*

This is a very welcome addition to the existing treatises on Hindu Law. It is on the same plan and method as that learned Judge's excellent treatise on "Minors." The book as its title indicates deals only with the Family Law and not with all the branches e. g., wills, gifts, inheritance, succession, stridhan, &c. Beginning with a general statement of what is Hindu Law and its application in the introduction, Mr. Trevelyn proceeds to consider in the first two chapters, the law of marriage and the reciprocal rights and duties of husband and wife. Chapters 3, 4 and 5 deal with the relationship of parent and child and adoption and its results and the duties of a father as to maintenance. The remaining 4 Chapters deal briefly—we wish, the chapter on debts were fuller—with the joint family property, its management and

The Lawyer.

and the law of partition and debts. Authorities are cited both from cases and the texts, for every proposition. Mayne's monumental treatise and Ghosh's learned masterpiece have both a place of their own, as authorities on Hindu law, but then this edition for which Messrs. Thacker, Spink & Co., deserve so much is bound to have its place along with other publications in the Tagore Law Lecture Series as an excellent ready reference book. The index is full and facilitates reference. We recommend it to law libraries.

Principles of the Law of Interest—By *E. Upton Esq. of the Middle Temple, Bar at-Law, Calcutta.* Thacker, Spink & Co, 1908. 2nd Edition, pages XV, 170. Price Rs. 6.

This is an enlarged and an useful edition. The law of interest and principles regulating its award are concisely brought out and discussed with reference to English and Indian cases. The subject is treated under 10 chapters, the first three presenting a short sketch of Usury laws; chapter 4 discusses the common Law on the point with a summary of decisions of 200 years. Then there is to be found in Chapter VI the distinction between Interest payable as a debt and as damages and their incidents, Chapters 6 and 7 deal with the Interest Act and Interest on Negotiable Instruments. The book ends with a chapter on stipulations by way of penalty and the circumstances under which the court will interfere to protect the borrower in case of contract induced by undue influence. The get up is excellent and the index is exhaustive. This is a great improvement upon the previous edition and we have no doubt it will be useful to the profession.

Probate and Administration Act.—(Act 5 of 1881) with notes of cases by *A. Kinney—Dy Administrator General of Bengal.* Calcutta, Thacker, Spink & Co. 1908. Pages XL 111. Price Rs 6

No doubt with the exception of Mr. Henderson's treatise on Testamentary succession, there is not any work dealing exclusively with the Probate and Administration Act; and we agree with Mr. Kinney that a book like the one before us was a desideratum; but we cannot agree with him in what he calls the advisability of confining the notes to cases decided by Indian High Courts to the exclusion of English Cases. One would certainly expect to find the leading English cases cited, for the majority of the sections of the Indian statute are based on English Law. Indian Cases referred to are certainly up to date and are well put with cross references. We trust Mr. Kinney will in a subsequent edition try to make his book exhaustive, at the same time preserving its handy character so as to make the work a useful referencer for the public and the profession alike.

A Manual of Hindu Law for students—By *Brindavan Prasad, Pleader, Bhagalpur,* 1903. Pages 75; XI. Price Re. 1.

This is a small Manual compiled mainly from the lecture notes of the late Babu Nabin Chunder Dey, Law Lecturer, Patna College. It is a very brief summary of important points which might be useful to refresh memory on the eve of the examination. We wish a new Edition is brought out soon with more of case law. In that case the book is likely to meet with recognition by those for whom it is meant.

ARTICLES, HUMOUROUS SIDE, REVIEWS.

The Essentials of a Lawyer.

I wish to lay down some propositions as the essentials of a lawyer—the qualities he ought to have when he starts out.

I think the first one is sound health. You may just as well make up your mind at the beginning, gentlemen, that unless you have sound physical health you cannot endure the strain of a law practice. Whether that strains comes as a trial lawyer or whether it comes in the sometimes more exacting work of the office, or of preparation for the trial, at any rate the strain that is put upon you time and again requires steady nerves and sound physical condition. If you have not got that and you cannot get it, seek some other employment; for your career will be full of bitterness and disappointment. I have seen it illustrated too often not to warn the young man at the beginning.

A good education is absolutely necessary much more than it was a generation ago. At that time an academic education was not as common as it is now and requirements were not as strict. The requirements that were looked for in the lawyers were not as great as they are now. Therefore, you must have the essential foundation which the academic education gives you. If you do not get it in college, you must spend a great deal of hard work in the endeavour to make up for the lack of it. I speak of it from personal experience in struggling to make up those deficiencies. I did not even finish the grammar school. I left school at twelve years of age to begin business, and what education I got after that was casual. I, therefore, realized how very hard I have had to work to make up deficiencies and I do not claim to have made them up more than in part. I feel that the years that a young man can spend in acquiring thorough, sound education are never ill-spent. They will give him usury on the time that he puts into them.

Another thing that a young lawyer needs is character. Character is a very elusive sort of thing. It may be what your reputation is, or it may not be. Character which you get from the public may be one thing, and your real character may be something else. But what you want is a real character, which impresses the people that you come in contact with, and makes an older man say "That is a likely young man. That young man has some character about him." This sums up a great deal; it means courage; it means firmness; it means having his own opinion about things. It

makes that impression upon the clients and the people that you want to be your clients and those that you want to have for your friends. That character in part you have to make. You have it, of course, when you start; but you have still to make it as you go along—by your experience, your observation, your reading, your conduct with men.

Honestly, I need hardly mention, because it is absolutely essential, in spite of the fact that the dishonest rogue does once in a while succeed. Yet, as between man and man, the honest man is the one that wins in the long run. It is the honest lawyer who gets the confidence of his clients; and that begets the confidence of the community. Being one day in Court, after I had practising two or three years, I noticed the deference with which an elderly lawyer was treated by the judge—a judge who was usually very severe and raked the lawyers fore and aft. As I observed this old lawyer trying the case, I thought I could do it better than he was doing. He did not seem to know how to conduct it. He did not know what to do with his witnesses. He fumbled, hemmed and hawed and did not express himself with fluency. But he won his case in the end. I made some inquiry about him. I found that that man's integrity was so well established, and he was known so well for straightforwardness with clients that the bar and bench respected him and he enjoyed the emoluments of a high reputation without having either the fluency or the skill which other lawyers possess. One of the most eloquent lawyers that we have ever had at this bar but a man utterly without moral character, spoke to us once, in the old ways at this law school, when he was so under the influence of liquor that he could hardly stand. "Gentlemen," he said, "I am a living example that eloquence alone cannot make character in a lawyer," and he went on, as he tottered on the platform: "Resist temptation! Resist it when it first comes to you? Resist when it second comes to you. Then the time surely comes when you will not have to resist." I never had such a lesson nor did any of us.

Industry is essential of course. Young lawyers are apt to think they are not advanced fast enough. They feel they are doing hard work, and that it ought to receive more appreciation. Now all I can say to you on that is that you cannot succeed in the law without the hardest of work. We have all worked hard before you. We have worked when it seemed well nigh hopeless. We have all known the times when everything seemed dark, though we had been at it for years, and worked and worked until there seemed to be no end to the work and the worry and the anxiety, and we were ready to give up. And yet the day and the dawn and the brightness finally came. It is that very work that gives you your skill as a lawyer. The labor has to be undergone to prepare you for things that are to come,

Another matter of supreme importance, gentlemen is tact. I cannot put it ahead of honesty to be sure nor of sound health nor of character; but it is very important. As a help to put yourself before the public, before your friends, before your would-be clients, the judges, and the lawyers, tact is one of the essentials.

(L. S. H.)

THE LATE MR. JUSTICE KEKEWICH.

The sudden death of Mr. Justice Kekewich last month came as a shock to the legal world. True, he had for a short time previous to his death not been in his usual health; still, a few days before his operation he was playing golf his favourite game at deal.

His name and feature had become so familiar to the world of chancery lawyers that he will be much missed. He was the senior chancery Judge, having been appointed in 1886. No doubt in his early days his judgments were often reversed, and hence many kindly witticisms about him, and his reputation, "courteous, rapid, and wrong" was difficult to live down, although in later years his decisions were admitted on all hands to be more correct. That he was courteous and kindly all will readily admit, and his memory will be cherished by many intimate friends to whom his numerous good qualities were known.

(L. R.)

A Unique Will.

We have been requested to republish the following unique will which was drawn and executed by *Charles Lounsbury*, who died in the *Cook County Asylum at Dunning, Ill.* Here it is.

"I, Charles Lounsbury, being of sound mind and disposing memory, do hereby make and publish this, my last will and testament, in order as justly as may be to distribute my interest in the world among succeeding men.

"That part of my interest which is known in law and recognized in the sheep-bound volumes as my property, being inconsiderable and of no account, I make no disposal of in this my will.

"My right to live being but a life estate, is not at my disposal, but these things excepted all else in the world I now proceed to devise and bequeath.

"Item. I give to good fathers and mothers, in trust for their children, all good little words of praise and encouragement, and all quaint pet names and endearments, and I charge said parents to use them justly and generously as the needs of their children may require.

"Item. I leave to children inclusively, but only for the term of their childhood, all and every, the flowers of the fields, and the blossoms of the woods, with the right to play among them freely according to the customs of children, warning them at the same time against thistles and thorns. And I devise to children the banks of the brooks, and the sands beneath the waters thereof, and the odors of the willows that dip therein, and the white clouds that float high over the giant trees. And I leave the children the long, long days to be merry in, in a thousand warp, and the night and the moon and the trains of the Milky Way to wonder at, but subject nevertheless to the rights hereinafter given to lovers,

"Item. I devise the boys jointly all the useful idle fields and commons where ball may be played; all pleasant waters where one may swim; all

snowclad hills where one may coast, and all streams and ponds where one may fish, or where, when grim winter comes, one may skate; to have and to hold the same for the period of their boyhood. And all meadows with the clover blossoms and butter flies thereof, the words and their appurtenances, the squirrels and the bird, and ecloes and strange noises, and all distant places which may be visited, together with the adventures there found. And I give to said boys each his own places at the fireside at night, with all pictures that may be seen in the burning wood, to enjoy without let or hindrance and without any incumbrance or care.

"Item. To lovers I devise their imaginary world with whatever they may kneed: as the stars of the sky, the red roses by the wall, the bloom of the hawthorn, the sweet strains of music, and aught else by which they may desire to figure to each others the lost ingress and beauty of their love.

"Item. To young men jointly, I devise and bequeath all boisterous, inspiring sports of rivalry, and I give to them the disdain of weakness and undaunted confidence in their own strength, though they are rude; I give them the power to make lasting friendships, and of possession companionous, and to them exclusively I give all merry songs and brave choruses, to sing with lusty voices.

"And to those who are no longer children or youths or lovers. I leave memory and I bequeath to them the volumes of the poems of Burns and Shakespeare and of other poets, if there be others, to the end that they may leave over the old days again, freely and fully, without title or diminution.

"Item: To our loved ones with snowy crowns I bequeath the happiness of old age, the love and gratitude of their children until they fall asleep.
(*Am. L.*)

REVIEWS.

Digest of Law cases of C.P Law Reports—1862–1906. by Barey Lal Shrivatsava B. A. LL, B. Pleader Saugor C. P. 1907. *Agra Moon Press. Raja Mandi, Columns 716. Vol. I.*

Mr. Barey Lal is to be congratulated upon the consummation of his labours which have resulted in the very useful digest before us; the central Provinces cases from, 1867 have been very carefully digested and arranged under appropriate headings. There have been good many cross references which largely facilitates the work of the busy practitioner. The table of cases is full and the table of headings exhaustive. We have no doubt these special features will make the volume very useful to practitioners in the Central Provinces for whom it is specially compiled as also to others who may have occasion to refer to C. P. cases. We recommend it to the profession.

Pensions Act—(23 of 1871) With Notes by Surb Dayal Khana B.A. Pleader, Amratsar 1904. Lahore Commercial Printing Works Price R. 1. Pages 66.

This is an annotated edition of the Pensions Act—the provisions of which are of constant application. The compiler seems to have embodied the rulings of all the High Courts and of the Punjab Chief Court upto June 1904. He has further added in the appendix the rules made by the Financial commissioner of Punjab. The book is likely to prove useful.

GLEANINGS, MISCELLANY, HUMOUROUS SIDE.

The Function of the Bar.—D'Aguest Can, the celebrated French Advocate, said of the Bar. "It is an order as ancient as the Magistracy, as noble as virtue, as necessary as justice; it is distinguished by a character which is peculiar to itself, and it alone always maintains the happy and peaceful possession of independence. The advocate is free without being useless of his country; he devotes himself to public without being a slave to it.

Berryer, at a later date said this; "The independence of the bar is a bulwark for each citizen against the rage and the violence of the authority, against the violation of law, unjust prosecutions. We have every thing to dread if it be weakened. We have no reason to despair while it is maintained and respected. There will triumph, I trust, the persevering efforts of right reason, of the spirit of justice, of public integrity. There, at least, in the words of D'Aguesscan, will resound the last cry of expiring freedom.
(M. L. J.)

A New Fashion in Wills.—It is quite time that a new fashion in wills should appear. The old style has been to make wills as full of holes as a sieve for the lawyers to fight about. It now seems to be the growing practice in New York to have ones will subjected to expert *ante mortem* construction and criticism. The idea is for the testator to assume that he is dead and to discover by an independent expert examination during his life what is likely to happen to his will after his death.

Daniel S. Remsen, of the New York bar, author of "Remson on the preparation and contest of Wills," recently said. The plan of submitting wills to a rigid criticism after they have been made and before the testator's death, is new in the sense of its becoming popular. It is also justified by results. In a majority of cases such examinations reveal one or more weak spots, and frequently grave errors are found in wills drawn by lawyers of high standing.

A little caution on the part of Mr. Tilden would have prevented his fiasco. As a result of this movement, I predict that the rising generation will be much litigation and many fortunes will be saved from the blight of family discord.
(C. L. N.)

HUMOROUS SIDE.

A Threatening Post Card.—Mrs. Thornhull, of Horsely Field, Wolverhampton, the Land Lady of Francis Hollis Morgan, who has just been acquitted in connection with the cattle maiming out-rages at Great Wyrley on August 26, has received an anonymous post card, the sub-

tance of the contents of which is as follows:—

“ Mr. Thornhill look out for the first of next month your time has come. I will strike you down with the same thing as I struck the horse down at Wyrley. The verdict will be wilful murder, not half. The card has a London Postmark apparently new Brompton but this can not be traced satisfactorily. The address is in printed characters, and the the other part is a serawal, and evidently disguised. The writer has embellished the card with various crude designs, including a knife attached to a long stick, a heart with a dagger through it, and a horse's head with daggers struck through it. (I. P. N.)

Write Like the Dickens—The Bangkok Times says that the proprietors of a Siamese newspaper have distributed the following notices:—

“ The news of English we tell the latest. Write in perfectly style and most earliest. Do a murder git commit, we hear of and tell it. Do a mighty chief die, we publish it, and in borders of sombre. Staff has each one been college, and write like the kippling and the Dickens. We circle every town and extortionate note for advertisement. But it. But it. Tell each of you its greatness for its good Ready on Friday. Number one.” (C. F. C.)

Gurantized Oils—The following advertisement of olive oil is the work of a Rio Janiero firm:—

“ Oars of olivers oils have gurantized of fitts quality. Diligently fabricated and filterated the consumer will find with them, the good test and perfect preservation. For to escape to any counterfeit, is necessary to require or any bottles this contremere deposed conformably to the law. The corks and the boxes hereall marked with fire.”

A strange testament—I, Alexander Taylor, in Preston do declare this to be my last will and testament. First, I do hereby bequeath my body to the dust and my spirit to God who gave it.

Secondly I do hereby to my son John Taylor, Blacksmith in Halifax and his heirs forover my land joining on the east side of Salmon River, Preston, containing 280 acres with house and out houses to the aforesaid John Taylor for ever.

And the land must be sold as soon as possible for to maintain me my wife Margaret Taylor. I have appointed James Lawlor in Dart mouth to sell the land and give what money it brings to the aforesaid John Taylor and him to collect and pay off what debt is upon the place and the remainder is for to maintain me and my wife as long as God is pleased to let us live in this world. 18 day of July 1866. Alexander Taylor (L. S.)

Part IX.

GLEANINGS, MISCELLANY, HUMOUROUS SIDE.

Lincoln's Advice to lawyers.

When Mr. Lincoln was a practicing lawyer he lectured before an assembly of young men of that profession and in the course of his remarks gave them this bit of advice.

" Discourage litigation, persuade your neighbours to compromise when ever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and waste of time. As a peace-maker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

" Never stir up litigation. A worse man can scarcely be found than one who does this. We can be more nearly a friend than who habitually overhauls the register of deeds in search of debts in titles, where-upon to stir up strife and put up money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it. "

The lawyer who stirs up litigation for the sake of getting a fee is on a par with the physician who would poison a man for a similar purpose. Our Courts were not made to encourage and promote strife between man and man, and every conscientious lawyer regards himself as a party of the court system, such a lawyer will always regard his clients to settle their disputes out of Court if possible, and if all lawyers followed that course the work and expenses of the courts would be greatly reduced.

Several years ago a citizen of Richmond was visiting a city in Canada and had the misfortune to loose his trunk. He spent the greater part of a day hanging around the luggage-room endeavouring to trace it, and finally became so exasperated by the seeming indifference of the railroad officials that he went to a lawyer's office with a view to bringing an action for damages.

The lawyer heard his complaint sympathetically, and then replied, " My friend, I know just how you feel, and I do not blame you for wanting to punish the rail road. I could take the case for you and put you to great expense and pocket a fee for myself. But I cannot conscientiously advise you to bring suit, you have the check for your trunk, and you will find it by and by. If not the rail-road will have to pay for it, swallow your indignation and go on your way. You will thank me for my advice by and by.

The traveller thanked him then and there, and has never ceased to hold that lawyer in kind remembrance especially as the trunk was found shortly after he left the office. (L. S. H.)

Origin of solicitors.—The historian and reporter of the Star Chamber, Hudson, of Gray's Inn, in the time of Charles I says.—“ In our age there are stepped up a new sort of people, called solicitors, unknown to the records of the law, who like the grass-hoppers in Egypt devour the whole land; and these I dare say were express maintainers, and could not justify their maintenance upon any action brought. I mean not where a lord or a gentleman employed his servant to solicit his cause, for he may justify his doing thereof, but I mean those which are common solicitors of causes and set up a profession not being allowed in any court, or atleast not in this court, where they follow causes. And these are the retainers of causes and devourers of men's estates by contention and prolonging suits to make them without end. ”

Though “ attorney ” was the original and time-honoured name of the larger half of the legal profession, it has in its turn become some what odious, and has been all but superseded since the passing of the judicature Act of 1875 by the name of “ solicitor, ” which in itself was some what in disfavour at first, as the above account shows. (M. L. J.)

HUMOUROUS SIDE.

A Lawyer's bill of costs—In Germany a solicitor sent his bill of for business done. In the bill relating to a suit for divorce, he charged the lady one item thus: “ Further being awake in the night, and having thought over your matter. ” (M. L. J.)

A clever advocate—A French advocate whose pleading seemed far too long in proportion to the subject matter he was dilating upon, received a hint from the president of the court to abridge his observations. But the advocate without abridging anything, replied with firmness that what he was saying was essential to this case. The president, hoping at last to silence him, said, “ The Court directs you to conclude at once with your proposition ” “ Very well, ” said the imperturbable advocate “ then I conclude with the proposition that the court shall hear, me ! (M. L. J.)

An Attorney befooled—An attorney of a very bad character, having a dispute with a bailiff, the latter brought on action against him, which Forte recommended to be compromised. The parties at length agreed upon arbitrators, but requested that in case of a difference of the arbitrators, they might permit them to call upon him (Foote) as umpire, to decide. “ Oh, no, ” said Foote “ I may be partial to one or other of you; but I will do better—I will recommend a thief as common friend of both. (M. L. J.)

GLEANINGS, MISCELLANY, HUMOUROUS SIDE.

Miscellany.

The Chief Justice—Sir Lawrence Jenkins K. C. I. E., Chief Justice of Bombay bade farewell to his many friends and admirers on this side of India on Saturday the 14th ultimo. The Appellate Bar presented his Lordship with an address placed in an excellent silver casket.

New Judges—Their Lordships Mr. Justice Beaman and Mr Justice Heaton are going on leave combined with the summer vacation; Mr. Knight who has been well known here will it is said very probably fill the vacancy during the absence of Mr. Justice Beaman.

The Bar—Among the losses to the Appellate Bar during the last 3 months are Mr. Nagesh D. Jather B. A. LL. B. who died last month after a short illness of 2 days owing intestinal trouble, and Mr. Buldeoji L. Dhruv B. A. LL. B. who has joined the Baroda State judicial service.

New Civil Procedure Code—The New Civil Procedure Code bill is now passed and it has become law. It comes into force from 1st January 1909. We present our readers with a copy of the full text of the code with its supplements and proceedings of the Council, reports of the committees &c. The case noted edition will be supplied at Rs. 2 only to our subscribers when it is out in July or so.

HUMOUROUS SIDE.

A clever Judge—"Prisoner, have you anything to say to the Court before sentence is pronounced?"

Prisoner—"I beg the Court to consider the youthfulness of my attorney.
(L. S. H.)

Success of Young Attorneys—A young attorney was asked by a friend how he liked his new profession. The answer was well, I find my profession is better than my practice.

Litigants—Oven Feltham once gave this definition of litigants. "To go to law is for two persons to kindle a fire to warm others and singe themselves to cinders, and because they cannot agree as to what is truth and equity, they will both agree to unplume themselves that others may be decorated with their feathers. 6 C. L. R. 438.

A clever prisoner—"Guilty or not guilty" I asked the judge of another, a prisoner. "Why, that sfer yer Honer to say. It is not for the likes o' 'meto be dictain' to yer Honor." "But you must answer for yourself."

* An how kin I tell yer Honer, till Oi've heard the evidence.

Lawyers' Clerks' Writing Wide-Lines.—A man asked the reason why lawyer's clerks wrote such wide lines in all their legal papers. He was told it was done to keep the peace, for if the plaintiff should be in one line and the defendant in the next line, the lines being too close together they might perhaps fall together by the ears. (M. L. J.)

An Oath's Value—Clarence S. Darrow, the well-known lawyer and essayist, discussing the Haywood trial, in which he played so prominent a part, said the other day.

"Some of the evidence in that trial was so transparently false that it reminds me of a case that came off in Alabama a few years back.

"One of the witnesses in this case was an extremely ignorant man. As his testimony progressed his ignorance became so shockingly evident that the Judge looking sternly down at him said.

"Look here, Sir, are you acquainted with the value of an oath ?

"The witness answered anxiously

"Judge, I hope I am. That their lawyer on yer left hand gimme six dollars to swar again the other side. That's the correct value of a an oath, ain't it, Judge ?" (29 G. B.)

A Pleader defying the Court—Mr. Cooper, an Irish Counsel, who considered himself an astute pleader, when a motion was made in the Court of Exchequer to set set his pleas aside for prolixity, rose to defend them. "and defied their Lord ships, or any man in Court, to frame shorter pleas." Baron Pennefather undertook to do so, and struck a large part of the averments leaving what he said was quite sufficient. When the Judges read it out, Cooper started up and wildly exclaimed "I demur to that plea and if it is set down for argument in any other Court of the hall, I'll bet your Lordships !" (M. L. J.)

A subscription to Bury an Attorney—O Connell said there was in his younger days an Irish barrister of the name of Parsons, who had a good deal of humour and who hated the whole tribe of attorneys. Perhaps they had not treated him very well, but his prejudice against them was very constant and conspicuous. One day, in the Hall of the Four Courts, an attorney came to him to beg a subscription towards burying a brother attorney who died in distressed circumstances. Parsons took out a one pound note and tendered it. "Oh Mr. Parsons" said the applicant, "I do not want so much—I only ask a shilling from each contributor. I have limited myself to that, and I cannot really take more." "Oh, take it, take it" said Parsons; "for Gods sake, my good Sir, take the pound, and while you are at it bury twenty of them."

The Oyster and the shell Questions,

17 M. L. J. 423

Part IX

Miscellaneous—News—Humourous side &c.

Poetic Justice.—The following decision (Georgia Appeals Reported, V. I. P. 656), and the argument of Mr. Stevens deserves immortality.

Logan Versus Irwin.

This case is controlled by an issue of fact, as to which the defendant in error has in his favour the finding of the jury and the approval of the trial Court.

Triver, from City Court of *Washington*—Judge *Hardem*, Feb. 2, 1907. Argued March 28th, Decided April 25th 1907. *William Wynus, Abundant W. Stephens*, for plaintiff in error. I. J. Irvin Jr. F. H. Colley, W. D. Thomson, contra *Powell J.* Although there have been argued to us in this case many questions of law, and the briefs are full of both rhyme and reason, yet, after a careful study of the record, we find nothing but a bare issue of fact, already decided adversely to the plaintiff in error by the trial court and jury. The argument of the plaintiff in error is unique, being presented in verse. However, when we compare the poetic argument with the record, we find that Shakespeare was correct in saying. "The poet's eye, in a fine frenzy rolling, doth glance from heaven to earth, from—earth to heaven, and, as imagination bodies forth the forms of things unknown, the poet's pen turns them to shapes, and gives to airy nothing a local habitation and a name," that "Truth shines the brighter laid in verse."

The "Thoughts that breathe and words that burn" must not be allowed to over-ride the merciless logic of the law, which dictates that the appellate Courts must not disturb a verdict supported by the evidences and approved by the trial Judge. Judgment affirmed. (G. B.)

Domestic Damages.—In a western town, H. was defending a physician in a suit brought by a negro who wanted damages, his wife having died shortly after an operation.

When it came his turn to cross-examine the plaintiff, he asked, "Mr. Wilson, how old was your wife when she died?"

"About forty-five, sir."

"Been in feeble health a long time, had she not Mr. Wilson, and cost you a great deal for medicine and help?"

"Yes, sir."

"You have married again, have you not?"

"Yes, sir."

"How old is your present wife?"

"About thirty-five, sir."

"Is she stout and healthy, Mr. Wilson?"

"Yes, sir."

"Then, Mr. Wilson, will you please state to this jury how you are damaged in this case.?"

Mr. Wilson could make no answer. The good and true men thought he had made rather a good thing by his bereavement.

A Prisoner who was an Attorney.—A man was tried before Lord Mansfield, on the Home Circuit, for stealing a silver ladle. In the course of the trial the prosecutor's counsel enlarged on the enormity of the offence and said it was all the worse, seeing that the prisoner was believed to be an attorney. The judge said in a half whisper to the counsel: "Come, come, don't exaggerate matters; if the fellow had been an attorney you may depend upon it, he would have stolen the bowl as well as the ladle!"

To attorneys fought a duel, and one of them shot away the skirt of the others' coat. The second of the good that, observing the truth of the aim, declared that if the opposite man had been a client, he would most probably have hit his pocket!

17 M. L. J 425.

Counsel too much Employed—Lord Brougham says it was once said by Baron Croft, when much employed in the House of Commons Committees, and seen walking about in the Court of Requests, unmoved by the many Calls of his name in all quarters, that he was there to avoid giving undue preference to any of his clients.

At a later date, Charles Austin, the great Parliamentary Counsel, was seen riding in Rotten Row one day, when many Committees were sitting, in each of which he held a brief. His explanation was that he did not wish to offend any of his clients by giving his services to one only.

(M. L. J.)

Counsel kicking Attorney.—A young Barrister had commenced forensic career in a novel and rather dangerous manner by kicking an attorney who was opposed to him on an arbitration. The attorney insulted him, and receiving a kick on the breach, brought his action of assault and battery, which was tried at the Lancaster assizes. It was the sporting cause of assize. John Williams (afterwards a Judge) who was for the defence extracted by a dexterous cross-examination the cause of offence and insulting speech—and concluded a very effective address for his client with these words—"An insult, a kick a farthing, all the world over." The plaintiff obtained his farthing. The counsel for the plaintiff gathering up his papers, gravely exclaimed as he left the court "My client has got more kicks than half pence."

(M. L. J.)

Part IX

Miscellaneous—News—Humourous side &c.

Our New Chief Justice.—We present to our readers a portrait of our New Chief Justice Mr. Basil Scott Bar-at-Law. Born in 1859 he was called to the Bar in the early eightties and he now brings with him his long experience of about 25 years at the Bar. He is too well-known for his uniform courtesy and admirable patience and with his deep legal accumen he will doubtless prove a worthy successor of that long line of the great Chief Justices of Bombap.

HUMOUROUS SIDE.

A junior counsel.—In a chancery case last month a point had just been decided against a "junior" the son of a well-known King's counsel. Proceeding he addressed the judge thus "and equally as clear in my favour as the one that has just gone against me". This was received with loud laughter whereat counsel set down hurriedly. The opposite counsel promptly seized his opportunity by saying "then it is only a question of costs my lord," and once more the Court laughed. (L S. J)

Being at the Bar.—"The worst man in the world" by Mr. Frank Richardson contains some epical observations on life. Lawyers will probably be struck by his statement that—"Being at the Bar is not a profession, it is an excuse for not having a profession" and "Everybody is a barrister who has not brains enough to be a journalist. (*Law Notes*)

In a French Court—Counsel (addressing the Judge after he had got his client, a thief, acquitted in the face of strong evidence): Your Honour, I would be obliged if you would order that the man be not released from custody until to-morrow.

Judge! Certainly, but what is your reason? "Well, you see, the road near my house is rather lonely, and as my client knows quite well that I shall have money on me he might possibly be in want for me.—" *Bon-Vivant.*"

Not for the Court to decide.—The Judge decided that certain evidence was inadmissible. The attorney took strong exception to the rules, and decided that it was admissible, "I know, Your Honor," said he, warmly, "that it is proper evidence. Here I have been practicing at the Bar for 40 years, and now I want to know I am a fool?"

"That, quietly replied the cours, " is a question of fact and not of law, so I do not want to pass any opinion upon it, but will get the Jury decide.
(G. B).

Highly suspicious—"It is a rule to which good lawyers usually adhere," says a Philadelphia attorney, "never to tell more than one knows. There was an instance in England, not many years ago, wherein a lawyer carried the rule to the extreme.

One of the agents in a Midland Revision Court objected to a person whose name was on the register, on the ground [that he was dead. The revision attorney declined to accept the assurance, however, and demanded conclusive testimony on the point.

The agent on the other side arose and gave corroborative evidence as to the disease of the man in question.

"But, Sir, how do you know the man's dead?" demanded the barrister.

"Well, was the reply, 'I don't know. It's very difficult to prove.'"

"As I suspected," returned the barrister.

"You don't know whether he is dead or not."

"Whereupon the witness coolly continued.

'I was saying, sir, that I don't know whether he is dead or not, but but I do know this; they buried him about a month ago on suspension.'

(Harper's weekly)

A Lawyer's Luck.—A North Carolina lawyer says that when Judge Buxton of that state, made his first appearance at the bar as a young lawyer, he was given charge by the State's solicitor, of the prosecution of a man charged with some misdemeanour.

It soon appeared that there was no evidence against the man, but Buxton did his best, and was astonished when the Jury brought in a verdict of "guilty".

After the trial one of the Jurors tapped the young attorney on the shoulder, "Buxton," said he "we don't think the fellow was guilty, but at the same time didn't like to discourage a young lawyer by acquitting him.

(Lippincott's)

A Higher Court.—"Ever try an automobile, Judge said a friend.

"No," replied the Judge, "but I have tried lot of people who have."
(G. B.)

Religious persecution.—A man addicted to walking in his sleep went to bed all right one night, but when he awoke he found himself on the street in the grasp of a policeman,

"Hoold on" he cried, "you must not arrest me. I am a somnambulist" To which the policeman replied, "I don't care what your religion is—yer can't walk the streets in yer night shire."
(G. B.)

Part IX

Miscellaneous—News—Humourous side &c.

Lord Mansfield on Judicial Popularity.

John Wilkes was a malefactor who had been prosecuted relentlessly by the British Government. He had withdrawn to Fance, and a judgment of outlawry had been pronounced against him. Coming over to England in 1768, he appeared in person in the Court of King's Bench, asking that the judgment of outlawry be reversed. Lord Mansfield was Chief Justice, and on a technical point, which had escaped the counsel for defendant, he gave judgment against the crown and declared that the outlawry should be reversed. The nation was frenzied by faction. Abuse and threats of personal violence were heaped upon the Chief Justice. Crowds thronged the hall where he sat. Amid such surroundings, in his address from the bench, Mansfield gave utterance to those memorable words:—"If, during this King's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party of or faction and without any collateral views. I honor the King, and respect the people; but many things required by the favor of either are, in my accounts, objects not worth ambition, I wish popularity, but it is that popularity which follows: not that which is run after. It is that popularity which sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the buzzes of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow."

(L. S. H.)

A clever witness.

Question: If a farmer owned a peacock and the peacock laid an egg in a neighbour's field, whom would the egg belong to?

Answer: Peacocks don't lay eggs.

(L. S. H.)

Jury—Scoundrels, "Gentlemen of the jury," said the prosecuting barrister, "this prisoner is an unmitigated scoundrel, he acknowledges it. And yet, thanks to the wisdom of the common law, he has been given a fair trial by jury of his peers."

(G. B.)

Sober as a Judge.—Witness! “No, I was not drunk I was sober as a—I was sober, my lord.”

Judge—“You were going to say as sober as a judge.” Witness. “Well, my lord, I was, and I beg your pardon; but I stopped myself in time.”

Judge—“Oh, I don’t mind it at all. In fact I consider it something of a compliment, but why it can not be varied now. I fail to understand.

(G. B.)

No Intent.—Magistrate:—This man caught you with your hand in his trousers pocket, what have you to say for yourself ?

Pickpocket:—Honest Judge !! them tronsers looked just like a pair I own, and I got sort o’ confused and was thinking I had me hand in me own pocket.—

(G. B.)

Charging the Jury.—A Chicago lawyer tells about a case that was tried in a backwoods Court. One of the lawyers retained was an Eastern man, new to the country.

“Does your Honour wish to charge the jury ?” asked the legal light, when all evidence was in. “No I guess not,” replied the judge. “I never charge ’em anything. These fellows don’t know much, any way, an ‘I let’ ’em have all they can make.”—

(G. B.)

Nothing more to say.—They were cross-examining, in a Chicago Court recently, a book maker who had been caught in the toils for playing some other game than his own. The third sub-assistance district attorney was intent upon a conviction, however, and was doing his best, none too successfully, to shake the testimony of the defendant.

“You’re sure of that ?” he yelled as the bookmaker stuck to an assertion that did not suit, the case of the state.

“Sure, I am certain,” came the answer.

“You remember that you are under oath ?”

“I do that.”

“And you’d swear to this statement of yours ?”

“Swear to it ? Why Mr. Lawyer and Judge, you honor, I’d give a hundred to one on it any day.”

(G. B.)

Miscellaneous—News—Humourous side &c.

The High Court Benches.

Mr. Justice N. G. Chaudavarkar who has been on 7 weeks leave rejoins today (1st August) We are glad to learn His Lordship is alright and is much better now for the change; to miraj Mr. Justice M. B. Chanbal reverts as Government Pleader. If we may be permitted to have our say, we can only express in a word that Mr. Justice Chaubal has during the short term given extreme satisfaction to the Bar by his phenomenal patience, uniform, courtesy and keen legal accuven. In Madras Mr. Pinhey I. C. S. who has made himself so well known as a presiding Judge in the recent sedition trials has been a new acquisition—we trust—on probation only—along with Mr. A. Rahim the Calcutta Barrister. In Bengal it is said Mr. Erlé Richards is likely to succeed Sir Francis Maclean. (S. C. J.)

High Court Vakils Gown.—We are glad our appeal to their Lordships of the Bombay High Court in *re* the Vakils Gown in the June number of this journal (1907) has had some effect; We learn their Lordships contemplate some rule in that respect. The gowen will no doubt be a mark appearance of dignity and will help to distinguish Vakils on the Appellate side from other practitioners. But one would wish that beyond this which will go to external appearance only their Lordship's would be pleased to extend the privileges of Vakils and allow them to appear at least in the Insolvency Matrimonial jurisdiction and in short causes on the original Side if not in long causes—as they do in Madras. We trust the Pleaders Association of Western India will move in the matter.

Humourous Side.

A S. Century Old German Law Suit—A German law-suit which has been in progress since the year 1430 between the local authority of Friemar, a suburb of Gotha, and certain mill-owners in a neighbouring village, was amicably settled on February 17 after 478 years of constant litigation. The original cause of the suit, which has swallowed up enormous sums in law costs, was the action of the mill-owners in raising without authorisation the height of a dam in the River Nesse in order to increase the supply of water to their mills. (17 M. L. J. 77).

While the Court smiled.—A lawyer whose attainments were scarcely of the first quality was arguing in one of the Philadelphia Courts before a patient Judge His argument was not without flaws, and at one point he fairly screamed out that if his client had done wrong, then, he, the lawyer was equally wrong, for he failed to see that any fault had been committed.

"But Mr. Blank' urged the judge" ignorance of the law excuses no man"

"Your honor shouted the lawyer" I do not want any excuse, what I say is excuse enough.

Soothing Ruffled Dignity—A lawyer who had been "jacked up" for speaking disrespectfully of the Court apologized in the following terms "your honor, I retract what I said, for I find that you were right and I was wrong, as you usually are." This of course was entirely soothing to the ruffled dignity of the Court—Law Notes.

Circumstantial Evidence—"You say you met the defendant on a street-car-and that he had been drinking and gambling" said the attorney for the defense during the cross examination.

"Yes " replied the witness.

"Did you see him take a drink ?

"No "

"Did you see him gambling ?

"No "

"Then how do you know " demanded the attorney " that the defendant had been drinking and gambling ?

"Well" explained the witness "he gave the conductor a blue chip for his car-fare and told him to keep the change"—Lippincott's.

Justice Decides for Both Sides.—After citing appearances of attorney the judgement of a Wisconsin J. P. reads as follows. "I hereby decide the case as follows. That the plaintiff Chas. F. P. have judgement against the defendant, I. P. R. in the sum of 2.25, and that the defendant I. P. R. have judgement against the plaintiff for 50 cents for damage to the stove, steps caused from moving a piano for plaintiff and for 1.75 for knocking the piano out of tune, in all for the sum of \$ 2.25, and further that each party pay his own witness fees and each party pay one half of my costs, costs taxed at \$ 18.71.

A. A. J. P. (C. & C.)

Introduced to the Public.—An attorney's card signed "yours to command" begins "To the public of greeting. This introduces to your man born under the master despotism of the age who came to America in 1883 as a representative of the Russian press after reaping his career as student and collection attorney, building up a business with branch offices in New York and Paris and explaining that he has learned the need of a high class collection agency in he announces that he will be glad to meet his patrons personally, assuring them that they will share the confidence imposed upon him by some 20000 clients in various parts of the united states."

(C. & Q.)

HUMOUROUS SIDE.

The Ingenious Counsel.—The trial it progress and to it he for His zeal, his skill his learning of law and lore;

“ His evidence cumulated yet his witnesses swore and swore.

“ To everything he wanted and to more and more and more.

“ But Alas ? Each a different tale did unfold.

“ And no two of them the same story told.

“ The defense rested then his procedure he did elect.

And moved the wondering Court a verdict to direct.

“ Direct a verdict ? ” His Honor cried with zest.

“ Your motion counsellor is surely made in jest.

This evidence here a unanimity most decidedly lacks.

Each witness has testified to a different state of facts.”

“ That I know ” the ingenious counsel urbanely replied.

“ For upon that circumstance have I purposely relied.

A similarity of recital to avoid I diligently sought.

Fearing the monotony would tire the learned Court. (G. B.)

Justice in Hungary.—An Englishman was travelling in a wild part of Hungary and made an application to a town magistrate asking to hear how justice was conducted.

The Magistrate gorgeous in a magnificent magyar costume.—received him cordially and sent for any case which might be awaiting trial. A gigantic gentarime in an immense cocked hat ushered in a prisoner, a plaintiff and a witness. The prisoner was accused of stealing the plaintiff's goose.

“ Well Sir ” said the Magistrate to the accuser “ what have you to say ? ”

“ Please your high mightiness,” the prisoner stole my goose.”

The Magistrate turned to the witness.

“ What have you to say.”

“ Please your high mightiness, I saw the prisoner steal the goose.”

The Magistrate then delivered the sentence.

“ I give you a fortnight in prison ” he said to the accused “ for stealing the goose; ” to the plaintiff he said “ I give you a fortnight in prison for not looking after your goose ” and turning to the witness “ you shall have a fortnight in prison for not minding your own business ” (Chicago Legal News.”)

Recognized the wife.—A. Francisco man, testifying in—Washington not long since in a land case, was asked if he knew a woman named Pearl E.B. For a minute or two he seemed to be struggling to remember. Finally his

face lighted up and he said "Why, Yes. I remember it now. She was my wife once, we were divorced eight years ago. (C. & C.)

Smart witness.—A fourteen year old boy recently testifying in a New York City Court was quite positive as to the time a certain accident occurred. The opposing counsel to test his ability, in such matters asked him to estimate a period of three minutes. When the boy finally said the time was up he was found right to the second. The lawyer hastily excused him, but afterwards discovered that all the time the boy had been looking at the Court room clock directly over the lawyer's head. (C. & C.)

Professional Ethics. "You'll have to send for another doctor" said the one who had been called after a glance at the patient.

"Am I so sick as that?" gasped the sufferer.

"I don't know just how sick you are," replied the man of medicine "but I know you're the lawyer who cross-examined me when I appeared as an expert witness; my conscience won't let me know you and I'll be hanged if I want to cure you. Good-day." (G. B.)

Integral Calculus. The Court officer who brought in the prisoner was a new man, and not familiar with the technical language of the law so when the Judge asked.

"What is this man accused of Mr. Officer?" he replied with some hesitation, "Bigotry, Your Honour?"

"What?" said the Judge "Bigotry? I didn't know that was a crime in Massachusetts. What has he been doing?"

"He's married three women, Your Honour."

Oh married three women? Why that isn't bigotry, that's trigonometry.

Language of the Law. "If I were give you an orange" said Judge Foote Topeka to D. G. Me Cray, "I would simply say 'I give you this orange'; but should the transaction be intrusted to a lawyer to put in writing he would adopt this form. 'I hereby give, grant and convey to you all my interest, right, title and advantage of and in the said orange, together with its rind, skin, juice, pulp and pits and all rights and advantage therein with full power to bite, suck or otherwise eat the same, or give away with or without the rind, skin, juice, pulps or pits anything hereinbefore, or in any other deed or deeds, instruments of any nature or kind whatsoever, to the contrary in anywise notwithstanding." (G. B.)

The Doctor.—Lord Bramwell, a notable wit of the English bench was once sitting in a case where the prisoner was accused of shoplifting. "My lord, my client is not a common thief" urged the barrister for the defence. He is suffering from kleptomania." That is exactly the disease I am here to cure" replied Lord Bramwell blandly.

Part VIII

GOVERNMENT NOTIFICATIONS H. C. CIRCULARS & REVIEWS.

—:0:—

High Court Rules (*Original Side*).

No. 583.—The following rule is added to the Rules of the Bombay High Court, 2nd Edition 1907 as Rule 572 (a). In every case where a counsel would be entitled to a refresher fee if present at the hearing of any suit appeal or other matter in which he is briefed, he shall not be entitled to any refresher fee if absent, nor shall the taxing master allow on taxation of costs between party and party any refresher fee unless the counsel certifies in writing that he has kept himself generally acquainted with the case as it was developed during the course of the hearing. (This Rule will come into force from 9th November 1908.)

REVIEW.

The Provincial Insolvency Act 3 of 1907—By A. P. Muddiman I. O. S. Registrar, High Court, Calcutta, Thacker Spink & Co., 1908, Pp. X 134. Price Rs. 4-8.

This is a welcome addition to the already existing commentaries on the Provincial Insolvency Act. The notes are fairly comprehensive. This edition has an advantage over others in as much as it embodies Calcutta, and Madras Rules under the Act. The get up is neat and index is full. We recommend it to the profession.

Memorandum of Practice in Civil cases—By W. J. Howard, LL.B. of the Middle Temple, Bar-at-Law, Calcutta—Thacker Spink & Co. 1908. 2nd Edition. Pages 104.

In this little book are to be found elementary rules of practice in civil cases, gathered together and well arranged. These are based mainly on the new Civil P. Code. There is lot of useful information likely to be of much use to a beginner. The fact that 2nd Edition has been called for within 8 months speaks to the usefulness of the book.

Part IX

Miscellaneous—News—Humourous Side &c.

Not Law.—In a jury trial in New York recently the attorney for the defendant started in to read to the jury from a certain volume of the Supreme Courts reports. He was interrupted by the Court who said "Colonel—it is not admissible, you know to read law to the jury."

"Yes, I understand your honour, I am only reading to the jury a decision of the Supreme Court. (G. B.)

Circuity of action.—In suit to enjoin trespass by neighbours hence Court says:—

Without aiming to detract from the dignity and importance of the *louis* *Ren* it would be intolerable to require of this plaintiff that he sue separately for the damage done by each cackling hen and stately rooster upon the occasion of each predatory excursion across the fateful road. (G. B.)

Teaching Manners—We believe it was Mr. Oswald who was the original of the well known story about teaching manners. Arguing once before the late Mr. Justice Key, who enjoyed a not undeserved reputation for irascibility and lack of suavity on the Bench, the Judge was moved by the Advocate's persistence in an argument of which he disapproved to blurt out. "I see, Mr. Oswald, that if I can teach you law I can't teach you manners." "No, my lord," was the retort. "I don't think your lordship can."

(L. N.)

Consolation in death sentence.—An amusing story is told at the expense of a prominent Baltimore lawyer who, like most young attorneys, got his first case by assignment from the Bench. His client had been indicted for murder, and his conviction was a foregone conclusion, as his guilt was unquestionable.

"The result of the trial was a sentence to be hanged; but the man made an appeal to the Governor for a pardon, and was anxiously awaiting a reply thereto when his lawyer visited him in his cell."

"I've got good news for you—very good news! The young lawyer said grasping the man's hand."

"Did the Governor—is it a pardon? the man exclaimed, joyously.

"Well no. The fact is, the Governor refuses to interfere. But an uncle of yours has died and left you 200 dollars, and you will have the satisfaction of knowing that your lawyer got paid, you know, was the comforting explanation?

(L. R. J.)

Divorce for drink. A Boston lawyer, who brought his wit from his native Dublin, while cross-examining the plaintiff in a divorce trial—brought forth the following.—

"You wish to divorce this woman because she drinks? "Yes, Sir."
"Do you drink yourself? "That's my business!"—angrily. Whereupon the unmoved lawyer asked, "Have you any other business?" (L. N.)

Miscellaneous News—Humourous Side &c.

Bail—We draw the attention of our readers to the learned judgment of Mr. Justice Mitter in 13 C. W. N. 51 (headnote in this number, Criminal Part) which we think should be accepted with very great satisfaction by the Bar. The Bench in the different High Courts would we trust be merely maintaining its high tradition for its being above the executive and the narrow interpretation of the statute and its own powers by expressing its approval of the liberal principles enunciated by the Mr. Justice Mitter.

Witnesses—Lord Justice Buckley in a recent English case attempted a classification of witnesses. There are, he said, four classes of witnesses (1) the timid witness, who is afraid to say too much and therefore seldom comes up to his proof; (2) the enthusiastic witness, who always exaggerates, however unwillingly; (3) the witness, who is neither nervous nor given to exaggeration, and tells a plain and straightforward story; 4, the witness, who tells the truth, but not the whole truth and keeps back something. "A fifth class" says the "Law times" ought to be added whose existence the Lord Justices, kindly nature has seemingly led him to ignore namely, the witness who does not shrink from deliberately saying what ever suits his purpose. If he thinks that he can do so with advantage and impunity. He is more frequently met with than would be the case if juries did not show a strange reluctance to convict on a charge of perjury which discourages judges from exercising this power of committing a perjured witness for trial."

All of which reminds us of the remark generally attributed to Lord Mansfield that "There are liars, damned liars and expert witnesses."

(L. S. H.)

Humourous Side.

A shrewd witness—"Counsel—You state in one place that you were born in 1884" ?

"Yes, Sir."

"And in another that you were born in 1885 ?"

"Yes, Sir."

"It's not that inconsistent ?"

"Oh, no" smiled the witness.

"I was born in 1884, and just stayed born. Why I'm born yet."

Then the great lawyer had to recognize that a novelty had been sprung on him.

(L. S. H.)

Reputation and Character defined.—A Lawyer addressing Jury—Do you understand the difference between character and reputation—Juror said, Reputation is the name your neighbours give you. Character is the one they take from you.

A Briefless—Ah, my dear Mr. Briefless, said Mr. Hardcash seizing the young barristers' hand and shaking it warmly, "I am so immensely obliged to you. That case the other day you know. I won it."

replied Briefless "but did I represent you"?
 "dear fellow" replied Hardcash, "your represented the other
 (H. H.)

A poor attorney.—A man arrested for murder was assigned a
 lawyer whose crude appearance caused the unfortunate prisoner to ask
 the judge.

"Is this my lawyer?"

"Yes" replied his Honor.

"Is he going to defend me?"

"Yes"

"If he should die, could I have another."

"Yes."

"Can I see him alone in the back room for a few minutes." (S. T.)

The Lawyers' price.—It is said that every man has his price. If
 this is true, it is pleasing to know that even in the present state of the
 money market lawyers are still maintaining a high standard, as is shown
 by the following bit of testimony. "What was said about the three hundred
 dollars?"

"I told him he could leave the money with the lawyer till I brought
 in the deed and it would be safe, because no lawyer would steal such a
 small sum as that."

A divorce stopped.—Lady (entering breathless). "I want to stop
 my divorce suit."

Lawyer—"Why you said your husband was an abominable beastly
 brute, and you wanted to be rid of him."

Lady—"Oh? yes, I know but an automobile has just run over him
 and I want you to start a suit for heavy damages."

A shrewd Judge.—Choate, the famous lawyer tells of a striking case
 in which a workman claimed to have lost the sight of his left eye by an
 explosion,

"There was no doubt that the man's eye had been injured, but the
 doctor claimed he could see out of it, while he declared that the sight was
 utterly destroyed.

"The Judge heard all the evidence *pro* and *con*. Then sending the
 workman from the courtroom, he said;

"Get a blackboard and write a sentence on it with green chalk.
 Also get a pair of spectacles with ordinary clear glass for the left eye and
 with red glass for the right."

This in the course of an hour or so, was done. Then the workman was
 brought back and he was ordered to put the queer glasses on.

"He put them on and the Judge said to him.

"Turn the blackboard round and see if you can read what is written.

"The man read the sentence without hesitation, whereupon the Judge
 said to him sternly.

"Your case is dismissed. You are an imposter. You must have read
 that sentence with your left eye, for the red glass over the right one turned
 the green writing black and made it quite invisible on the black-
 board."

(G. B.)

Part X.

Index of Cases followed and dissented from.

<p>Abboy v. Annamalai, 12 Mad 180 not followed 31 Bom. 393</p> <p>Annamali v. Malayandi, 29 Mad. 426 approved 31 Bom. 393</p> <p>Baboo Gunnesb Dutt Singh v. Mugneeram 11 B. L. R. 321 followed 29 All. 692, 694, 705</p> <p>Balwant Singh v. Gumani Ram, 5 All. 591 followed 29 All. 644</p> <p>Beharee Lall v. Baboo, N.W.P., H. C. Rep., 1867, p. 80 followed 29 All. 684</p> <p>Beni Ram v. Kundan Lal, 21 All 496 applied 29 All 657</p> <p>Bhagwan Doss v. Bhawani, 26 All. 14 not followed 30 Mad. 408</p> <p>Bhinuk Chowdhree v. The Collector of Jonnore, N. W. P. H. C. Rep. 1867, p. 271 followed 29 All. 684</p> <p>Brij Mohun Das v. Manm Bibi, 19 All. 348 followed 29 All 640</p> <p>Chunder Nath Chowdhry v. Tirthanund Thakoor, 3 Cal. 504 followed 30 Mad. 402</p> <p>Dhunput Singh v. Denobundhu Saha 9 C. L. R. 279 followed 34 Cal. 935</p>	<p>Erode Manikkoth Krishnan Nair v. Pnttiedeth Chembakkoseri Krishnan Nair, 26 Mad. 365 followed 30 Mad. 507</p> <p>Fayj Dhal v. Aftabuddin Sirdar. 6 C. W N. 272 followed 34 Cal. 922</p> <p>Gordhandas v. Harivalubhdas 21 Bom. 281 followed 29 All. 675</p> <p>Gunnaiyan v. Kamakshi Ayyar, 26 Mad 589 approved 30 Mad. 434</p> <p>Gulab Khan v. Abdul Wahab Khan, 31 Cal. 365 approved 34 Cal. 954</p> <p>Gnanasambhanda Pandara Saunadhi v. Velu Pandaram, 23 Mad 279 followed 30 Mad, 393</p> <p>Govinda Bhatta v. Narain Bhatta, 29 Mad. 424 followed 30 Mad. 408</p> <p>Hargu Lal Singh v. Govind Rai, 19 All. 541 followed 30 Mad. 500</p> <p>Huzari Ram v. Bodai Ram, 1 C. W. N. 279 dissented from 30 Mad. 507</p> <p>Ishan Chunder Das Sarkar v. Bisnu Sirdar, 24 Cal. 825 approved 34 Cal. 999</p>
---	---

II

- Jogendra Chundr v. Fulkumari**, 27 Cal. 77 approved 31 Bom. 393
- Jusoda Koenwar v. Gouree Byjnath Pershad**, 6 W. R. (Mis.) 53 followed 34 Cal. 959
- Kali Krishna v. Raghunath Deb**, 31 Cal. 224 not followed 30 Mad. 455
- Kandiyil Cheriya v. The Zamorin of Calicut**, 29 Mad. 515 followed 30 Mad. 447
- Kamala Nayak v. Ranga Rao**, 1 M.H. C. R. 24 dissented from 30 Mad. 411
- Kaveri v. Venkamma**, 14 Mad. 396 followed 30 Mad. 504
- Madai Thalavoy Kummarasamy Mudaliyar v. Nallakanna Tevan**, 5 M. H. C. R. 289 not approved 30 Mad. 473
- Mammod v. Locke**, 20 Mad. 487 not followed 30 Mad. 507
- Madan Mohun Lal v. Holloway**, 12 Cal. 555 followed 31 Bom. 516
- Mahomed Wahil v. Mohomed Ameer**, 32 Cal. 532 followed 30 Mad. 459
- Nilmadhab Bose v. Ananta Ram Bagdi**, 2 C. W. N. 755 followed 34 Cal. 922
- Nund Lal Boes v. Mir Aboo Mahomed**, 5 Cal. 597 dissented from 30 Mad. 459
- Parsotam v. Sanehi Lal**, 21 All. 408 not followed 31 Bom. 393
- Pichuvayengar v. Oliver**, 25 Mad. 261 followed 30 Mad. 444
- Queen-Empress v. Arumugam**, 20 Mad. 189 distinguished 30 Mad. 466
- Radhasyam v. Sibn Panda**, 15 Cal. 647 not followed 31 Bom. 393
- Raghu Singh v. Abdul Wahab**, 23 Cal. 442 declared obsolete 34 Cal. 926
- Ramaswamy Ayyar v. Vengidvaami Ayyar**, 22 Mad. 113 distinguished 30 Mad. 452
- Rami Reddi v. Rengamma**, 11 M.L. J. 20 distinguished 30 Mad. 452
- Sandhu Taraganur v. Hussin Sahib**, 28 Mad. 87 followed 30 Mad. 507
- Seshadri v. Krishnan**, 8 Mad. 192 followed 30 Mad. 470
- Shama v. Lechhu Shekh**, 28 Cal. 300 declared obsolete 34 Cal. 926
- Srinivasa Ayyangar v. Ayyathurai Pillai**, 21 Mad. 416 followed 30 Mad. 507
- Sri Virada Deo v. Sri Brozo Kishoro Deo**, 1 Mad. 69 followed 31 Bom. 373
- Syed Husain v. Madhan Khan**, 17 Mad. 265 overruled 30 Mad. 470
- Upendra Chandra Sidgh v. Mohri Lal Marwari**, 31 Cal. 745, not followed 31 Bom. 393
- Venkatachalapati v. Krishna**, 13 Mad. 287 followed 30 Mad. 498

Index of Cases followed and dissented from.

- | | |
|--|---|
| <p>Babu Gunesh Dutt Singh v. Mugneer-
ram, 11 B. L. R., 321
followed 29 All. 692, 694, 705</p> <p>Bai Manekbai v. Manekji Kavasji, 7
Bom. 213 followed 32 Bom. 1</p> <p>Balakram Rai v. Gobind Nath Tiwari,
12 All. 129
dissented from. 29 All. 758, 766, 770</p> <p>Balwant Singh v. Gumani Ram, 5 All.
591 followed 29 All. 680</p> <p>Beharee Lall v. Baboo, N. W. P., H.
C. Rep., 1167, p. 80
followed 29 All. 684</p> <p>Beni Ram v. Kundan Lall, 21 All.
496 applied 29 All. 657</p> <p>Bhinuk Chowdhree v. The Collector of
Jounpore, N. W. P., H. C. Rep.,
1867 p. 271 followed 29 All. 684</p> <p>Brij Mohandas v. Mannu Bibi, 19 All.
348 followed 29 All. 640</p> <p>Brindaban Chunder v. Bhopal Chun-
der, 17 W. R. 377
not followed 29 All. 595</p> <p>Chaudhri Mehdi Hasan v. Muhammad
Hussan, 33 L. A., 68 at p. 75
followed 30 Mad. 519</p> <p>Durga Charan v. Kali Prasana, 29
Calc. 863 followed 29 All. 614.</p> <p>Gobind Nath v. Surja Kantha, 26 Calc.
460 not followed 29 All. 614.</p> <p>Gordhandas v. Harivallabhdas, 21 Bom
281 followed 29 All. 575.</p> | <p>Gossamee Sree Greedharrejee v. Ru-
manlolljee Gosseme, L. R. 16 I. A.,
137, 17 Calc., 3
followed 29 All. 666</p> <p>Govindarazulu Narasimham v. De-
varabhotala Venkatanarasayya, 27,
Mad. 206.
dissented from 32 Bom. 81.</p> <p>Gunga Kumar v. Ashutosh Gosami, 23
Calc., 863 followed 29 All. 595</p> <p>Haji Rahmuttulla v. Coverji Bhuja,
23 Cal. 546
followed 29 All. 778.</p> <p>Hiramony Dassi v. Radha Churn Kar
(1899) 5 Cal. W. N. 128
followed 32 Bom. 104.</p> <p>Ibrahim Ali v. Mohsin Ali, 18 All.,
422 followed 29 All. 586</p> <p>Jung Bahadur v. Mahadeo Prosad, 31
Calc., 207 followed 9 All. 598</p> <p>Kachayi Kuttalie v. Udumpumthala
Kunhi Puttra, 29 Mad., 58
dissented from 29 All. 730</p> <p>Kadir Bacha Saheb, v. Abdul Rahiman
Saheb, 24 Mad. 639
followed 32 Bom. 103.</p> <p>Koya v. Mussa Koya, 24 Mad., 513
not followed 30 Mad. 519</p> <p>Krishna Gobind Dhur v. Hari Churn
Dhur, 9 Calc. 367
followed 29 All. 595</p> <p>Kura Mal v. Ram Nath, 28 All. 414
followed 29 All. 640</p> |
|--|---|

IV

Lekhray Roy v. The Court of Wards,
14 W. R. 395

not followed 29 All. 595

Macnaghten v. Lalla Mewa Lall, 3
Calc. 285, distinguished 30 Mad. 393

Madhu Sudan Sen v. Kamini Kanta Sen, 9 C. W. N., 825

followed 29 All. 660

Maharajah Joymungul Singh v. Mohan Ram, 23 W. R. 429

followed 29 All. 586

Mahomed Abid Ali Kumar Kodar v. Ludden Sahiba, 14 Calc., 276

followed 30 Mad. 400

Mailthi v. Samappa Banta, 26 Mad, 369

Distinguished 30 Mad. 547

Mariam-nissa Bibi v. Joynab Bibi, 33
Calc., 1101

followed 25 All. 732

Muhammad Husain v. Mul Chand, 27
All. 395

followed 29 All. 595

Multan Chand Kanyalal v. Bank of Madras, 27 Mad., 346

followed 29 All. 617

Musammât Bibi Walian v. Banke Beri Pershad Singh, 30 I. A., 182,

distinguished 29 All. 679

**Mussumat Jai Bansi Kunwar v. Chat-
ar Dhari Sing,** 5 B. L. K. 181

followed 29 All. 666

Nareyan v. Bholagir, 6 Bom. H. C. R.
(A. C. J.) 80

distinguished 32 Bom. 32

Ningawa v. Ramappa, 28 Bom. 94
dissented from 32 Bom. 7

**Panchanada Velan v. Vaithinatha Sae-
trial,** 29 Mad. 383

followed 25 All. 732

Parekh Ranchore v. Bai Vakhat, 11
Bom. 119

not followed 30 Mad. 402

Prag Das v. Baldeo Prasad, Weekly
Notes, 1906, p. 212

followed 29 All. 778

**Premji Jivan Bhate v. Haji Cassum-
Juma Ahmed,** 20 Bom. 208

distinguished 22 Bom. 32

Ram Deehul v. Chukhoo, N. W. P.,
H.C. Rep., 1869, p. 291

followed 29 All. 584

Sabri v. Ganeshi, 14 All., 23

followed 29 All. 662

Sham Lal v. Ghasita, 23 All. 459

followed 29 All. 730

Sheoratan Kunvar v. Ram Pargash,
18 All., 227,

followed 29 All. 666.

Shivram v. Krishnabai, 31 Bom. 80
dissented from 32 Bom. 7

Shrinivas v. Hanmant, 24 Bom. 260

followed and applied 32 Bom. 7

Vinayakrao v. Vidyashankar, 9 Bom.
L. R. 404

distinguished 32 Bom. 32

**Vythinatha Ayyar, v. Yeggia Nara-
yana Ayyar,** 27 Mad., 382

dissented from 29 All. 668

Index of Cases followed and dissented from.

Atdul Hamid v. Empress, 13 Calc. 349,
dissented from 35 Cal. 450

Abdul Karim v. Saliman, 27 Calc., 193,
followed 31 Mad. 215

Abdulla Naba v. Moidin Kutti, 17 M.
L. J. 287, not followed 31 Mad. 262.

Abirash Malakar v. Empress, 4 C. W.
N. 979 followed 35 Cal. 400

Ablakh v. Bhagirathi, 9 All. 427,
dissented from 31 Mad. 157.

Achal Ram v. Kazim Hussin Khan,
27 All. 271; L. R. 32 I. A. 113
followed 35 Cal. 420

Adimulam v. Pir Ravuthan, 8 Mad. 424
not followed 31 Mad. 164.

**Afzal Begam v. Muhammad Obaidut-
ullah Khan**, A. Weekly Notes, 1899,
p. 220, followed 30 All. 323.

Akbar Ali Khan v. Domi Lal, 4 C.
W. N. 821 followed 35 Cal. 243

Alamdard Husain, in re, 23 All. 249
followed 35 Cal. 909

Ambalajayana Pandaram v. Vazuran, 19
Mad. 52 followed 35 Cal. 683.

**Annada Kumar Roy v. Indra Bhusan
Mukhopadhyas**, 12 C. W. N. 49
followed 35 Cal. 939

Annaji Rau v. Raghu Bai, 6 M. H. C.
R. 400, followed. 31 Mad. 251.

**Apaji Bapuji Kargupi v. Nilkantha
Annaji**, 3 Bom. L. R. 667,
not followed 35 Cal. 683

Atta-ullah v. Azim-ullah, 12 All. 494,
followed 35 Cal. 294.

**Badha Nath Singh v. Chandi Charan
Singh**, 30 Cal. 660.
dissented from 31 Mad. 157.

**Bajrangi Singh v. Manokarnika Bakesh
Singh**, 30 All. 1 = L. R. 35, I. A. 1
followed 35 Cal. 939

Bal Gangadhar Tilak, in re 26 Bom
785 followed 35 Cal. 909

Balabux v. Rukhmabai 30 Calc. 725,
L. R. 30, I. A. 130,
followed 35 Cal. 721.

Banh Bal v. Manni Lal, 27 All., 450),
dissented from 31 Mad. 33

Bapu v. Vajir, 21 Bom. 548.
dissented from 30 All. 292.

Begam v. Muhammad Yakub, 16 All.
344 followed 35 Cal. 575

Begu Singh v. Emperor, 34 Calc. 551,
followed 31 Mad. 140.

Begu Singh v. Emperor, 34 Calc. 551
followed 35 Cal. 114, 183

Begu Singh v. Emperor 34 Cal. 551,
dissented from. 32 Bom. 11

**Bhup Indar Bahadur Singh v. Bijai
Bahadur Singh**, (23 All., 155),
distinguished 31 Mad. 29

Bibian Bibi v. Sachi Bewah, 31 Cal.
863 followed 31 Mad. 354

Bibi Tasliman v. Harihar Mahto, 32
Calc. 253 followed 35 Cal. 767.

Brojo Kishori Dassee v. Sreenath Bose,
9 W. R. 463, followed 30 All. 201

Chakrapani v. Varahamma, 18 Mad.
227 not followed 31 Mad. 33

Chhagan v. Lakshman Dagdu (9 Bom. L. Rep., 728) followed 31 Mad 33

Chhitar Singh v. Rup Singh, 1906, p. 237, dissented from 30 All. 134.

ChundraNath Dey v. Burroda Shoon-dury Ghose, (22 Calc. 813) approved 31 Mad. 33

Damodara v. Somasundara, (R. 12 Mad., 429), distinguished. 31 Mad. 8

David Nadar, 14 M. L. J. 433, distinguished 31 Mad. 25.

Dharam Singh v. Bhoolar, A. Weekly Notes, 1908, p. 123, followed 30 All. 285,

Dhondo v. Govind, 9 Bom. 20 followed 35 Cal. 202

Dolegobind Chowdhry v. Dhanu Khan 25 Cal. 559 followed 35 Cal. 117

Empress v. Jiwanand, 5 All. 221, dissented from 35 Cal. 450

Fischer v. Komakshi Pillai, 21 Mad. 136, distinguished 31 Mad. 19.

Fletcher v. Bealey, 28 Ch. D. 688, followed 32 Bom. 146.

Flureau v. Thornhill (1776) 2 W. Bl. 1078, not followed 32 Bom. 165

Furzand Ali v. Mohanth Lal Puri, 32 Calc. 268 followed 31 Mad. 15.

Ganga Dei v. Shiam Sundar, 26 All. 69, dissented from 31 Mad. 215

Ganga Bishun Singh v. Mahomed Jan, 33 Cal. 1193 not followed 35 Cal. 636

Ganga Prasad v. Kura, 28 All. 408 not followed 31 Mad. 345

Gangadas Bhutter v. Jogendra Nath, Mitter, 11 C. W. N. 403. dissented 31 Mad. 258.

Govind Atmaram v. Santai, 12 Bom. 270, followed 30 All. 523.

Great Berlin Steamboat Co. in re, L. R. 26 Ch. D. 616 followed 35 Cal. 551

Great Indian Peninsula Railway v. Chandra Bai, 28 All. 552 followed 35 Cal. 194

Grish Chunder Sasmal v. Dwarka-NathDinda 24 Calc. 640 overruled 35 Cal. 579

Guana Sambanda Pendaras Sannadhi v. Gopalasamy Chettiar v. Fischer, 28 Mad. 328, distinguished 31 Mad. 19.

Gulam Rasul v. Balu Sayaji, (1907) 9 Bom. 527 not followed 32 Bom. 337.

Hara Charan v. Emperor, 32 Calc. 367, followed 35 Cal. 138

Hashmat Ali v. Muhammad Umar, 29 All. 808 overruled 30 All. 827.

Hatim Ali Khundkar v. Abdul Ghaffur Khan, 8 C. W. F. 102 dissented 30 All. 249

Hem Chunder Sunyal v. Sarnamoyi Debi, 22 Cal. 854 followed 35 Cal. 939

Hem Chunder Bhunjoo v. Mon Mohini Dassi, 3 C. W. N. 604, not followed 35 Cal. 737.

Huri Pershad Chowdhry v. Naib Singh, 21 Calc. 542, dissented from 30 All. 124

In re Subbaraya Vathayar, 15 M. L. J. 469, followed 31 Mad. 140.

- Intizam Ali Khan v. Narain Singh, 5 All. 316, followed 30 All. 278.
- [Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty, 31 Calc 297, dissented from 30 All. 124.
- Jagan Nath v. Ganesh, 18 All. 413, followed 31 Mad. 164.
- Jairam Mahton v. Emperor, 35 Cal 103 followed 35 Cal. 368
- Jogendra Nath Roy v. Debb Nath Chatterjee, 8 C W. N. 113, distinguished 35 Cal. 298.
- Kabiruddin v. Koneeram, 35 Calc 368, followed 35 Cal. 443
- Kalee Beparee, In re, 1 C. L. R. 521 followed 35 Cal. 368
- Kedarnath Dutt v. Har Chandra Dutt, 8 Cal. 420 followed 31 Mad. 71
- Kishori Mohun Roy Chowdry v. Chunder Nath Pal, 14 Calc 644, followed 31 Mad. 177.
- Kotappa v. Vellur Zamindar, 25 Mad 50 followed 35 Calc 683.
- Kumar Ram Lal v. Nil Kanth, L. R. 20 I. A. 112, 20 Cal. 843 followed 35 Cal. 420
- Kusal v. Badri Prasad, Weekly Notes, 1907 p. 283, overruled 30 All 244
- Lekha v. Bhauna, 18 All 101, followed 30 All. 147.
- Lolit Mohun Sarkar v. Queen-Empress, 22 Calc. 313, followed 35 Cal. 450
- Luxumibai v. Hajee Widina Casum, 23 Bom. 629, followed 30 All. 35.
- Luxumi Bai v. Ganesh-Raghunath, 25 Bom. 878, followed 30 Cal. 111
- Madhub Chunder Chuckerbutti v. Debenra Nath Dey, 1 C. L. J. 147, distinguished 35 Cal. 298.
- Manickka Odayan v. Rajagopala Pillai, 30 Mad. 507, doubted 31 Mad. 177.
- Marudamuthu Nandan v. Srinivasa Pillai, 21 Mad. 128, not followed 35 Cal. 939
- Madho Prasad Singh v. Baijnath, Weekly Notes, 1905, p. 152, followed 30 All. 148.
- Mallikarjunadu Setti v. Lingamurti Pantulu, 25 Mad 244 followed 31 Mad. 354
- Mallikarjuna Sastri v. Narasimha Rao, 24 Mad., 412, dissented 30 All. 249
- Manohar Lal v. Banarsi Das, 29 All., 495. followed 30 All. 204
- Magaluri Garudiah v. Narayan Rungiah, 3 Mad. 359, followed 35 Cal. 276
- Maharana Shri Rammaisingji v. Vadilal Vakatchand, 20 Bom. 61, followed 35 Cal. 320.
- Maharajah of Bharatpur v. Kanno Dei 23 All. 181; L. R. 28 I. A. 35 followed 35 Cal. 221
- Marcharam v. Pranchankar, 6 Bom 298 disapproved 35 Cal. 226
- Maqbul Fatima v. Lalta Prasad, 20 All. 523 followed. 35 Cal. 431
- Miya Vali Ulla v. Sayad Biva Santi Miya v. 22 Bom. 496, dissented from 31 Mad. 12.
- Memindra Chandra Nandy v. Troy-luckho Nath Borah, 9 C. W. N 750, followed 31 Mad. 8.

Mohun Chunder Koondoo v. Azeem
Gazee Chowkeedar, 12 W. R. 45
followed 31 Mad. 86

Moholal v. Bai Jivkore, 28 Bom. 472,
doubted 31 Mad. 169.

Munisamy Naidu v. Munisamy Reddi,
22 Mad. 293, followed 30 All. 292

Mubarak Husain v. Kaniz Bano, 27
All. 160 not followed 35 Cal. 575

Muthappa Chetty v. Muthu Palani
Chetty, 27 Mad. 80,
not followed 31 Mad. 252.

Nand Kishore Lal v. Suraji Prasad,
20 All. 392 followed 32 Bom. 441.

Nemdari Roy v. Mussummat Bissas-
sari Kumari, 2 O. W. N. 591.
dissented from 30 All. 317

Nobokishore Sarma Roy v. Huri Nath
Sarma Roy, 10 Cal. 1102
followed 35 Cal. 939

Parbutty v. Higgin, 17 W. R. 475.
followed 35 Calc 756.

Padmakar v. Mahadev, 10 Bom. 21,
followed 32 Bom. 404.

Periannan Chetti v. South Indian
Railway Company, 22 Mad. 137
dissented from 35 Cal. 194

Pearv Mohan v. Mohendra Nath, 4
O. L. J. 566 followed 30 All. 292.

Phul Chund Lall v. Raghubans Suho-
yee, 9 W. R. 109,
followed 31 Mad. 153.

Pichu Ayyangar v. Oliver, 26 Mad.
260, distinguished 31 Mad. 22.

Pitamber Sundarji v. Casibai 11 Bom.
272, distinguished 32 Bom. 165

Pramada Nath Roy v. Ramani Kanta
Roy 35 Calc. 331, L. R. 35 I.A. 73
followed 35 Cal. 744

Prannath Roy Chowdhry v. Rookes
Begum, 7 Moo. I. A. 323
followed 35 Cal. 209

Queen-Empress v. Bal Gangadhar Ti-
lak, 22 Bom. 112
dissented from 35 Cal. 945

Queen-Empress v. Angnu, (1889) All.
W. N. 180,
not followed 35 Cal. 157

Queen-Empress v. Girdhari Lal, 8 All.
653, dissented from 35 Cal. 450

Queen v. Hurnath Guho Thakurta 24
W. R. Or. 52,
Not followed 35 Cal. 457

Queen-Empress v. Sham Lal, R 14
Calc 707, followed 35 Cal. 141

Queen-Empress v. Bishamber Lal, 13
All. 577, approved 31 Mad. 280.

Queen Empress v. Muppan, 18 Mad.
401, followed 31 Mad. 271.

Queen-Empress v. Ramasami. 24 Mad.
321, followed 31 Mad. 272.

Queen-Empress v. Rahim Bukhsh, 20
A. I. 206, dissented from 35 Cal. 400

Queen Empress v. Toni, (1895) All.
W. N. 143,
dissented from 35 Cal. 400

Raj Kumari Debi v. Bama Sundari
Debi, 23 Cal. 610
followed 35 Cal. 909

Rami Deka v. Brojo Nath Saikia. 25
Calc. 97, dissented from 30 All. 320

Ram Nath v. Bindrahan, 18 All. 369
followed 30 All. 823.

Rameswar Singh v. Jibender Singh,
32 Calc. 1158 followed 35 Calc. 823.

**Ram Chandra Marwari v. Mudhesh-
war Singh**, 33 Cal. 1158
followed 35 Cal. 823.

Ramji v. Bai Parvati, 27 Bom. 91,
dissented from 31 Mad. 215

Ramchandra Gopal v. Sadashiv Nayan
1885 P. J. p. 219 followed 32 Bom. 356

Ramchandra v. Narayanasami, 10 Mad.
229 followed 31 Mad. 22.

**Ram Coomar Coondoo v. Chunder
Canto Mookerjee**, 1 L. R. 2 Calc.
233; L. R. 4 L. A. 23
followed 35 Cal. 420

Ram Pershad v. Emperor, 6 C. W. N.
593, followed 35 Cal. 400

**Ranjit Singh v. Radha Charan Chan-
dra**, 34 Cal. 564,
dissented from 35 Cal. 346.

Rani Surnomoyee v. Shooshee Mokhee
12 Moo. L. A. 244
followed 35 Cal. 209

Rogers v. Frank, (1827) 1 Y. and J.
409 followed 32 Bom. 364.

**Royzuddi Sheikh v. Kali Nath Muker-
jee**, 33 Cal. 985
followed 31 Mad. 337

Runga Ayyar v. Emperor, 29 Mad.
331 not followed 35 Cal. 114

**Rupjaun Bibee v. Abdul Kadir Bhu-
yan**, 31 Cal. 643
followed 35 Cal. 538

Saundanappa v. Shivbaswa, 31 Bom.
354, not followed 31 Mad. 251.

See Mahomedan Law 32 Bom. 172

Sham Sundram Iyer v. Abdul Latif,
27 Calc. 61, followed 30 All. 35.

**Shib Chandra Roy v. Chandra Narain
Mockerjee**, 32 Calc. 719,
distinguished 35 Calc. 298.

Shib Lal v. Bhagwan Das, 11 All. 244
followed 30 All. 127.

Shumsool Fooda v. Shewukram, L. R.
2 L. A. 7, 14: 14 B. L. R. 226, 232,
233 followed 35 Cal. 896

Sirdar Sing v. Ram Kunwar, Weekly
Notes, 1902, p. 62,
followed 30 All. 201

Sonu Singh v. Bihari Singh, 33 Calc.
283 dissented from 30 All. 150.

Srimant Roy v. Mahadeo Mahata, 31
Calc. 550, not followed 35 Cal. 737

Sundar Koer v. Rai Sham Krishen, 34
Cal. 150 followed 35 Cal. 221

**Sunder Koer v. Chandishwar Prosad
Singh**, 30 Cal. 679,
followed 32 Bom. 108.

Tokhan Singh v. Girwar Singh, 32
Cal. 494 followed 31 Mad. 330

Tulshi Rai v. Ram Das, Weekly Notes,
1887 p. 71 followed 30 All. 323.

**Uma Sundari Devi v. Bindu Bashini
Chowdhrahi**, 24 Calc. 759,
followed 30 All. 292.

Umatul Mehdi v. Kulsum, 35 Cal. 120
followed 35 Cal. 571

Supplement to

Reg. No. 276-B.

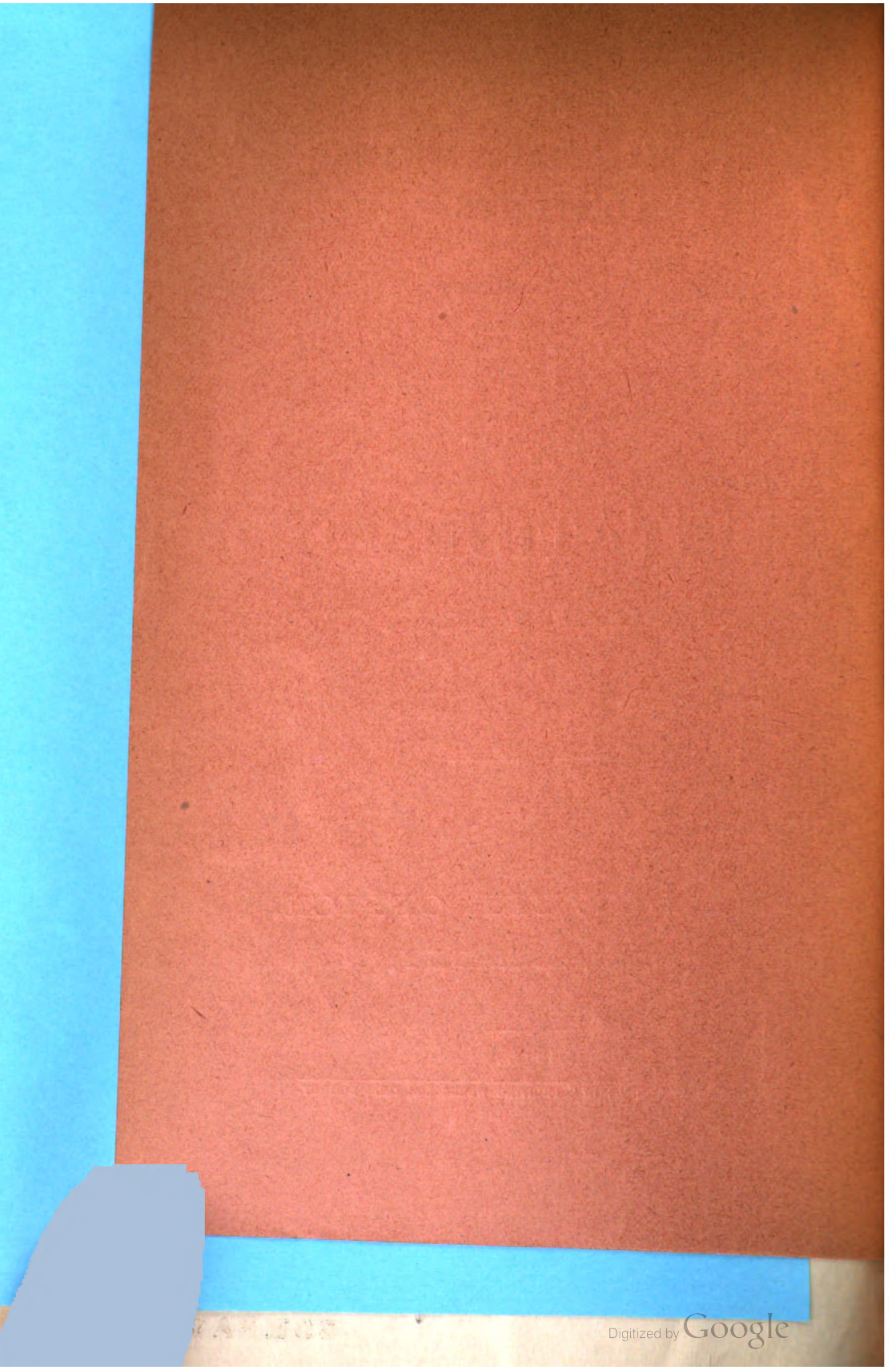
"LAWYER."

**THE
NEW
LIMITATION ACT
IX of 1908.**

**THE LAWYER OFFICE,
Girgam,—BOMBAY.**

1908.

PRINTED AT THE "JAIN" PRINTING WORKS CO., LTD., BOMBAY.



THE INDIAN LIMITATION ACT, 1908.

CONTENTS.

—:—

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART II.

Limitation of Suit, Appeals and Applcation

3. Dismissal of suits. etc., instituted, etc., after period of limitation.
4. Where Court is closed when period expires.
5. Extension of period in certain cases.
6. Legal disability.
7. Disability of one of several plaintiffs or applicants.
8. Special exceptions.
9. Continuous running of time.
10. Suits against express trustees and their representatives.
11. Suits on foreign contracts

PART III.

Computation of Period of Limitation.

12. Exclusion of time in legal proceedings.

1

SECTIONS.

13. Exclusion of time of defendant's absence from British India and certain other territories.
14. Exclusion of time of proceeding *bona fide* in Court without jurisdiction.
15. Exclusion of time during which proceedings are suspended.
16. Exclusion of time during which proceedings to set aside execution-sale are pending.
17. Effect of death before right to succeed.
18. Effect of fraud.
19. Effect of knowledge in writting.
20. Effect of payment of interest as such or of part payment of principal.
Effect of receipts of produce of mortgaged land.
21. Agent of person under disability.
Acknowledgment or payment by one several joint contractors, etc.
22. Effect of substituting or adding new plaintiff or defendant.
23. Continuing breaches and wrongs.
24. Suit for compensation for act not actionable without special damage.

CONTENTS.

SECTIONS.

25. Computation of time mentioned in instruments.
-

PART IV.

Acquisition of Ownership by Possession.

26. Acquisition of right to easements.
27. Exclusion in favour of reversioner of servient tenement.
28. Extinguishment of right to property.
-

PART V.

Savings and repeals.

29. Savings.

SECTIONS.

30. Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act 1877.
31. Provision for suits by certain mortgagees in territories mentioned in second schedule.
32. Repeals.
-

THE FIRST SCHEDULE— LIMITATION.

THE SECOND SCHEDULE. Territories referred to in section 31.

THE THIRD SCHEDULE— Enactments repealed.

**THE
INDIAN LIMITATION ACT
BEING
ACT IX OF 1908.**

RECEIVED THE G.-G.'S ASSENT ON THE 7TH AUGUST 1908.

*An Act to consolidate and amend the law for the
Limitation of Suits, and for other purposes.*

[Note. Figure at the end indicates the corresponding
section of the old Act.]

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts ; and whereas it is also expedient to provide rules of acquiring by possession the ownership of easements and other property ; It is hereby enacted as follows :—

**PART I.
PLELIMINARY.**

1. (1) *Short title, extent and commencement*—This Act may be called the Indian Limitation Act, 1908. (Section 1.)*

(2) It extends to the whole of British India ; and

(3) this section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

2.—*Definitions.* In this Act, unless there is anything repugnant in the subject or context. (Section 3.)

(1) “applicant” includes any person from or through whom an applicant derives his right to apply :

* This section represents the section of the repealed Act XV of 1877.

(2) "bill of exchange" includes a hundi and a cheque:

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be:

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached or subsisting upon the land of another:

(6) "foreign country" means any country other than British India:

(7) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention:

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue:

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(10) "suit" does not include an appeal or an application: and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3.—*Dismissal of suits, etc., instituted etc., after period of limitation.*—Subject to the provisions contained in section 4

to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator. (Section 4.)

4.—*Where Court is closed when period expires.* Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens. (s. 5, para 1.)

5. *Extension of period in certain cases.*—Any appeal or application for a review of judgement or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when that appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. (Section 5, paragraph 1.)

Explanation. The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section. (New. Cf. section 5 A.)

6.—*Legal disability.* Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed

from the time prescribed therefor in the third column of the first schedule.

Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application with the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed,

(3). Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) *Where such representative is at the date of the death affected by any such disability, the rules contained sub-sections (1) and (2) shall apply.*

Illustrations.

(a) The right to sue for hire of a boat accrues to A during this minority. He attains majority four years after such accrues. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After accrues, but while Z is still a minor, he become insane. Time runs against Z from date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. *Disability of one of several plaintiffs or applicants.*
Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time

will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the *disability has ceased*. (section 8.)

Illustrations.

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane and C is minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

8.—*Special exceptions.* Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made. (s. 7. last para.)

Illustrations.

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has under the ordinary law, nine

years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. *Continuous running of time.* Where once time has begun to run, no subsequent disability or inability to sue stops it : (section. 9.)

Provided that, where letters of administration to the estate of a credit or have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. *Suits against express trustees and their representatives.* Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. (Section 9.)

11. *Suits on foreign contracts* (1) Suits instituted in British India on contracts entered into in a foreign country, are subject to the rules of limitation contained in this Act. (section 11.)

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rules.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12 *Exclusion of time in legal proceedings* (1) In computing the period of limitation prescribed for any suit, appeal or

application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed *from* or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. (section 12.)

13. *Exclusion of time of defendant's absence from British India.* In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded (section 13.)

14. *Exclusion of time of proceeding bona fide in Court without jurisdiction.* (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in Court of appeal, against the same party for the same relief shall be excluded,

where such proceeding is prosecuted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to entertain it,

Explanation 1.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction. (Section 14.)

15. Exclusion of time during which proceedings are suspended. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. Exclusion of time during which proceedings to set aside execution-sale are pending. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded. (Section 16.)

17. Effect of death before right to sue accrues. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right

accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) *Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is legal representative of the deceased against whom the plaintiff may institute or make such suit or application.*

(3) Nothing in *sub-sections (1) and (2)* applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office. (Section 17.)

18.—*Effect of fraud. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him,*

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or in the case of the concealed document when he first had the means of producing it or compelling its production. (Section 18.)

19. *Effect of acknowledgment in writing. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been*

made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) *Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed ; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.*

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right. (New.) (Section 19).

20.—*Effect of payment of interest as such or of part payment of principal.* (1) *Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,*

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2)—*Effect of receipt of produce of mortgaged land.*

Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court. (Section 20.)

21.—*Agents of person under disability.* (1) The expression “agent duly authorized in this behalf,” in sections 19 and 20, shall in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment. (New).

(2)—*Acknowledgment or payment by one of several joint contractors, etc.* Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them. (Section 21).

22.—*Effect of substitution or adding new plaintiff or defendant.* (1) Where, after the institution of a suit a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. (Section 212, para. 1.)

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff. (New.)

23. *Continuing breaches and wrongs.* In the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues. (section. 23.)

24. *Suit for compensation for act not actionable without special damage.* In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results. (section 24.)

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

25. *Computation of time mentioned in instrument.* All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar. (section 25.)

Illustration.

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. *Acquisition of right to easements.* (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any persons claim-

ing title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way watercourse, use of water, or other easement shall be absolute and indefeasible.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that subsection shall be read as if for the words "sixty years" were substituted. (New.)

Explanation I.—Nothing is an interruption within the meaning of this section unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made. (S. 26.)

Illustrations.

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. *Exclusion in favour of reversioner of servient tenement.* Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the

computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land, A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

PART V.

SAVINGS AND REPEALS.

28. *Extinguishment of right to property.* At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. (Section 28.)

29 *Savings.* (1) Nothing in this Act shall—

(a) affect the Indian Contract Act, 1872, section 25.

(b) affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereinafter in force in British India

(2) Nothing in this Act shall apply to suits under the Indian Divorce Act.

(3) Sections 26 and 27 and definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend. (New)

30 *Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act*

1877. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first. (New.)

31.—*Provisions for suits by certain mortgagees in territories mentioned in the second schedule.* (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first ; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either than a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable. (New.)

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907, and before the passing of this Act, either in a Court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and on such restoration, the provisions of sub-section (1) shall apply.

32.—*Repeal.* The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof. (New.)

THE FIRST SCHEDULE.

(See section 3.)

FIRST DIVISION : SUITS.

Discription of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	<i>Part I.— Thirty days Thirty days.</i>	When notice of the award is delivered to the plaintiff.
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	<i>Part II— Ninety days. Ninety days.</i>	When the act or omission takes place.
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	<i>Part III.— Six months. Six months.</i>	When the dispossession occurs.
4.—Under the employers and Workmen (Disputes) Act, 1860, section 1.	Ditto.	When the wages, hire or price of work claimed accrue or accrues due.
5.—Under the summary procedure referred to in section 128 (2) f of the Code of Civil Procedure 1908.	Ditto.	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	<i>Part IV.— One year. One year.</i>	When the penalty or forfeiture is incurred.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
7.—For the wages of a house hold servant, artisan or labourer not provided for by this schedule,	<i>Part IV.— One year. One year.</i>	When the wages accrue due.
8.—For the price of food or drink sold by the keeper or hotel, tavern or lodging house.	Ditto.	When the food or drink is delivered.
9.—For the price of lodging.	Ditto.	When the price becomes payable.
10.—To enforce a right of preemption, whether the right is founded on law, or general usage, or on special contract.	Ditto.	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property, sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—(<i>New</i>) By a person against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order.	Ditto.	The date of the order.
(1) Order under the Code of Civil Procedure, 1908, on a claim preferred to,	Ditto.	

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>or an objection made to the attachment of property attached in execution of a decree ;</p> <p>(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.</p>	<p><i>Part IV.—</i> <i>One year</i> <i>contd.</i> <i>One year.</i></p>	<p>The date of the order.</p>
<p>11A.—(<i>New</i>) By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser to establish the right which he claims to the present possession of the property comprised in the order.</p>	<p>Ditto.</p>	<p>The date of the order.</p>
<p>12.—To set aside any of the following sales:—</p>	<p>Ditto.</p>	<p>When the sale is confirmed, or would</p>

THE FIRST SCHEDULE—*Contd.*
FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>(a) sale in execution of a decree of a Civil Court ; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (d) sale of a patni taluq sold for current arrears of rent.</p>	<p><i>Part IV— One year. contd. One year.</i></p>	<p>otherwise have become final and conclusive had no such suit been brought.</p>
<p><i>Explanation.</i>—In this article “patni” includes any intermediate tenure saleable for current arrears of rent.</p>		
<p>13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	Ditto.	<p>The date of the final decision or order in the case, by a Court competent to determine it finally.</p>
<p>14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.</p>	Ditto.	<p>The date of the act or order.</p>
<p>15.—Against Government to set aside any attachment lease or transfer of immovable property by the revenue authorities for arrears of Government revenue.</p>	Ditto.	<p>When the attachment, lease or transfer is made.</p>

THE FIRST SCHEDULE—*Contd.*
FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period beings to run.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	<i>Part IV— One year. concl.</i> One year.	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto.	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto.	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto.	When the imprisonment ends.
20.—By executors or representatives under the Legal Representatives' suits Act, 1855.	Ditto.	The date of the death of the person wronged.
21.—By executors, administrators or representatives under the India Fatal Accidents Act, 1855.	Ditto.	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto.	When the injury is committed.
23.—For compensation for malicious prosecution.	Ditto.	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

THE FIRST SCHEDULE—contd.
FIRST DIVISION: SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV— One year. contd. One year.</i>	
24.—For compensation for libel.	One year.	When the libel is published.
25.—For compensation for slander.	Ditto.	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto.	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto.	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Ditto.	The date of the distress.
29.—For compensation for wrongful seizure by moveable property under legal process.	Ditto.	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	Ditto.	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	Ditto.	When the goods ought to be delivered.
23.—Against one who, having a right to use property	Ditto.	When the conversion first becomes known

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>for specific purposes, perverts it to other purposes.</p> <p>33.—Under the Legal Representatives' Suits Act, 1855, against an executor.</p> <p>34.—Under the same Act against an administrator.</p> <p>35.—Under the same Act against any other representative.</p> <p>36.—For compensation for any malfeasance, misfeasance or non-feasance independent of contrast and not herein specially provided for.</p>	<p><i>Part V.—</i> <i>Two years</i> Two years.</p> <p>Ditto.</p> <p>Ditto.</p> <p>Ditto.</p> <p>Ditto.</p>	<p>to the person injured thereby. When the wrong complained of is done.</p> <p>Ditto.</p> <p>Ditto.</p> <p>When the malfeasance, misfeasance or nonfeasance takes place.</p>
<p>37.—For compensation for obstructing a way or a watercourse.</p> <p>38.—For compensation for diverting a watercourse.</p> <p>39.—For compensation for trespass upon immovable property.</p> <p>40.—For compensation for infringing copyright or any other exclusive privilege.</p> <p>41.—To restrain waste.</p>	<p><i>Part VI.—</i> <i>Three years.</i> Three years.</p> <p>Ditto.</p> <p>Ditto.</p> <p>Ditto.</p> <p>Ditto.</p>	<p>The date of the obstruction.</p> <p>The date of the diversion.</p> <p>The date of the trespass.</p> <p>The date of the infringement.</p> <p>When the waste begins.</p>

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
42.—For compensation for injury caused by an injunction wrongfully obtained.	<i>Part VI.— Three years. contd.</i> Three years.	When the injunction cases.
43.—Under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto.	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a <i>Transfer of property</i> by his guardian.	Ditto.	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code :— The Bangal Land— revenue Settlement Regulation, 1822 The Bangal Land— revenue Settlement Regulation, 1825. The Bangal Land— (Sallment and Deputy Collectors) Regulation, 1833.	Ditto.	The date of the final award or order in the case.

THE FIRST SCHEDULE—Contd.
FIRST DIVISION : SUITS—Contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years contd.</i>	
46.—By a party bound by such award to recover any propperty comprised therein.	Three years.	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of <i>immoveable</i> property made under the Code of Criminal Procedure, 1898, or the Mamlutdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order.	Ditto.	The date of the final order in the case.
48.—For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto.	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto.	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals vehicles, boats or household furniture.		When the hire becomes payable.

THE FIRST SCHEDULE--*contd.*FIRST DIVISION: SUITS--*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— three years. contd.</i>	
51.—For the balance of money advanced in payment of goods to be delivered	Three years.	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto	The date of the delivery of the goods.
53.—For the price of goods sold and delivered, to be paid for after the expiry of a fixed period of credit.	Ditto	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange no such bill being given.	Ditto	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto	When the work is done.
57.—For money payable for money lent.	Ditto	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto	When the cheque is paid.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
59.—For money lent under an agreement that it shall be payable on demand.	<i>Part VI.— three years. contd.</i> Three years.	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand. <i>Including money of a customer in the hands of his banker so payable.</i>	Ditto	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI;— three years. contd.</i>	
	Three years.	in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Ditto	The day so specified.
67.—On a single bond, where no such day is specified.	Ditto	The date of executing the bond.
68.—On a bond subject to a condition.	Ditto	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at fixed time after sight or after demand.	Ditto	When the fixed time expires.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>73.—On a bill of exchange or promissory note payable on demand and note accompanied by any writing restraining or postponing the right to sue.</p> <p>74.—On a promissory note or bond payable by instalments.</p> <p>75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.</p> <p>76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.</p> <p>77.—On a dishonoured foreign bill, where protest has been made and notice given.</p>	<p><i>Part VI.— Three years. contd.</i></p> <p>Three years.</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p>	<p>The date of the bill or note.</p> <p>The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.</p> <p>When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.</p> <p>The date of the delivery to the payee.</p> <p>When the notice is given.</p>

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period beings to run.
78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	<i>Part VI.— Three years. contd.</i> Three years.	The date of the refusal to accept.
79.—by the acceptor of an accommodation-bill against the drawer.	Ditto	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto	When the bill, note or bond becomes payable.
81.—by a surety against the principal debtor.	Ditto	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnity.	Ditto	When the plaintiff is actually damnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

THE FIRST SKHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.</p> <p>86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.</p> <p>87.—By the assured to recover premia paid under a policy voidable at the selection of the insurers.</p> <p>88.—Against a factor for an account.</p> <p>89.—By a principal against his agent for moveable property received by the latter and not accounted for.</p>	<p><i>Part VI.— Three years. contd.</i></p> <p>Three years.</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p>	<p>The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.</p> <p>When proof of the death or loss is given or received to or by the insurer, wheather by or from the plaintiff, or any other person.</p> <p>When the insurers elect to avoid the policy.</p> <p>When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made when the agency terminates.</p> <p>Ditto.</p>

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years. contd.</i>	
90.—Other suits by principals against agents for neglect or misconduct.	Three years.	When the neglect or or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
29.—To declare the forgery of an instrument issued or registered.	Ditto	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto	The date of the failure.
98.—To make good out of the general estate of a	Ditto	The date of the trustee's death, or, if the

THE FIRST SCHEDULE--*contd.*FIRST DIVISION : SUITS--*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.-- three years. contd.</i>	
deceased trustee the loss occasioned by a breach of trust.	Three years.	loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-shares.	Ditto.	The date of the payment in excess of the plaintiff's own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto.	When the right to contribution accrues.
101.—For a seaman's wages.	Ditto.	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto.	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Ditto	When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.

THE FIRST SCHEDELE—*contd.*FIRST DIVISION: SUITS—*contd.*

Discription of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.-- three years. contd.</i>	
104.—By a Muhammadan for deferred dower <i>mu'waj-jal</i>).	Three years,	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Ditto	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto	When the profits are received.
110.—For arrears of rent.	Ditto	When the arrears become due.
111.—By a vendor of immoveable property for <i>personal payment of unpaid purchase-money</i> .	Ditto	The time fixed for completing the sale,

THE FIRST SKHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>112.—For a call by a company registered under any Statute or Act.</p> <p>113.—For specific performance of a contract.</p> <p>114.—For the rescission of a contract.</p> <p>115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.</p>	<p><i>Part VI.—</i> <i>Three years.</i> <i>contd.</i> Three years.</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p>	<p>When the case is payable.</p> <p>The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.</p> <p>When the facts entitling the plaintiff to have the contract rescinded first become known to him.</p> <p>When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing when it ceases.</p>
<p>116.—For compensation for the breach of a contract in writing registered.</p>	<p><i>Part VII.—</i> <i>Six years.</i> Six years.</p>	<p>When the period of limitation would begin to run against a suit brought on a similar contract not registered.</p>

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	<i>Part VII.—</i> <i>Six years.</i> contd. Six years.	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto	When the right to sue accrues.
121.—To avoid incumbrance or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	<i>Part VIII—</i> <i>Twelve</i> <i>years.</i> Twelve years	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India or a recognisance.	Ditto.	The date of the judgment or recognisance.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	<i>Part VIII.— Twelve years. contd.</i> Twelve years.	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Ditto	The date of the alienation.

THE FIRST SCHEDULE--*contd.*FIRST DIVISION: SUITS--*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	<i>Part VIII— Twelve years. contd.</i> Twelve years.	When the alienation takes possession of the property.
127.—By a person excluded from joint family property, to enforce a right to share therein.	Ditto	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto	When the right is denied.
130.—for the resumption or assessment of rent free land.	Ditto	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>malikana</i> and <i>huqs</i> shall, for the purpose of this article, be deemed to be money charged upon immoveable property.	Ditto	
133.—To recover moveable property conveyed or be-	Ditto	The date of the purchase

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	<i>Part VIII— Twelve years contd. Twelve years.</i>	
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards <i>transferred</i> by the trustee or mortgagee for a valuable consideration.	Ditto	The date of the <i>transfer</i> .
135.—Suit instituted in a Court not established by Royal Charter by a Mortgagee for possession of immoveable property mortgaged.	Ditto	When the mortgagor's right to possession determines.
136.—By a purchaser at private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Ditto	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto	When the judgment-debtor is first entitled to possession.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>138.—<i>Like suit by a purchaser at a sale in execution of a decree, when the judgment debtor was in possession at the date of the sale.</i></p> <p>139.—<i>By a landlord to recover possession from a tenant.</i></p> <p>140.—<i>By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.</i></p> <p>141.—<i>Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.</i></p> <p>142.—<i>For possession of immovable property when the plaintiff, while in possession of the property has been dispossessed or has discontinued the possession.</i></p> <p>143.—<i>Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.</i></p>	<p><i>Part VIII</i> <i>Twelve years.</i> <i>contd.</i> Twelve years.</p>	<p>The date when the sale becomes absolute.</p> <p>When the tenancy is determined.</p> <p>When his estate fails into possession.</p> <p>When the female dies.</p> <p>The date of the dispossession or discontinuance.</p> <p>When the forfeiture is incurred or the condition is broken.</p>
	Ditto	
	Ditto	
	Ditto	
	Ditto	
	Ditto	

THE FIRST SCHEDULE—*Contd.*
FIRST DIVISION : SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	<i>Part VIII.</i> <i>Twelve years.</i> <i>contd.</i> Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	<i>Part IX—</i> <i>Thirty years.</i> Thirty years.	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged	Ditto	When any part of the principal or interest was last paid on account of the mortgage debt.
146A.—(New) by or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.		The date of the dispossession or discontinuance.
147.—By a mortgagee for foreclosure or sale.	<i>Part X.—</i> <i>Sixty years.</i> Sixty years.	When the money secured by the mortgage becomes due.

THE FIRST SCHEDULE—*Contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period beings to run.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	<i>Part X.— Sixty years. Sixty years.</i>	When the right to redeem or to recover possession accrues. Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person.
Second Division		Appeals.
150.—Under the Code of Criminal Procedure, 1898 from a sentence of death passed by a Court of Session.	Seven days.	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court	Twenty days.	The date of the decree or order.

THE FIRST SCHEDULE—*Contd.*SECOND DIVISION: APPEALS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.		
152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed from.
153.—Under the same Code, to a High Court from an order of a Subordinate Court refusing leave to appeal His Majesty in Council.	Ditto	The date of the order.
154.—Under the Code of Criminal Procedure, 1898 to any Court other than a High Court.	Ditto	The date of the sentence or order appealed from.
155.—Under the same Code, to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days.	Ditto.
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days.	The date of the decree or order appealed from.
157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months.	The date of the order appealed from.
Third Division	Applications.	
158.—Under the Code of Civil Procedure, 1908, to set aside an award.	Ten days.	When the award is submitted to Court.

THE FIRST SCHEDULE—*Contd.*
THIRD DIVISION: APPLICATIONS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
159.—For leave to appear and defend suit under the <i>summary procedure referred to in section 128 (2) (f) of the same Code.</i>	Ten days.	When the summons is served.
160.—For an order under the same Code, to restore to the file an application for review <i>rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.</i>	Fifteen days.	When the application for review is rejected.
161.—(160 A) For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto	The date of the decree or ordeerr
162.—For a review of judgment by any of the High Courts of the Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab, or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days.	Ditto
163.—By a plaintiff, for an order to set aside a dismissal for default of	Thirty days.	The date of the dismissal.

THE FIRST SCHEDULE—*Contd.*THIRD DIVISION: APPLICATIONS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p><i>appearance or for failure to pay costs of service of process or to furnish security for costs.</i></p> <p>164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i>.</p>	Thirty days.	The date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree.
<p>165.—Under Code of Civil Procedure, 1908, by a person dispossessed of immoveable property, and disputing the right of the decreeholder or purchaser at a sale in execution of a decree to be put into possession.</p>	Ditto	The of the dispossession.
<p>166.—<i>Under the same Code</i> to set aside a sale in execution of a decree.</p>	Ditto	The date of the sale.
<p>167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.</p>	Ditto	The of the resistance by obstruction.
<p>168.—For the readmission of an appeal dismissed for want of prosecution.</p>	Ditto	The of the dismissal.
<p>169.—For the rehearing of an appeal heard <i>ex parte</i>.</p>	Ditto	The date of the decree in appeal or, where notice of the appeal was not

THE FIRST SCHEDULE—*Contd.*THIRD DIVISION: APPLICATIONS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
170.—For leave to appeal as a pauper.	Sixty days.	<i>duly served, when the applicant has knowledge of the decree.</i> The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Ditto	The date of the abatement.
172.—(171) Under the same Code by the assignee or the receiver of an insolvent plaintiff or applicant for an order to set aside the dismissal of a suit or an appeal.	Ditto	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days.	The date of the decree or order.
174.—(173 A) For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ditto	When payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months.	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ditto	The date of the death of the deceased plaintiff or appellant.

THE FIRST SCHEDULE—*Contd.*THIRD DIVISION : APPLICATIONS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
177.—(New.) under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Six months.	The date of the death of the deceased defendant or respondent.
178.—(New.) Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Ditto	The date of the award
179.—(New.) By a person desiring to appeal under the same Code to his Majesty in Council for leave to appeal.	Ditto	The date of the decree appealed from.
180.—(New.) By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession.	Three years.	When the sale becomes absolute.
181.—(178) Application for for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Ditto	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided	Three years or, where a certified copy	1. The date of the decree or order, or

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*con'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
for by <i>article 183</i> or by section 48 of the Code of Civil Procedure, 1908.	of the decree or order has been registered, six years.	2. (where there has been an appeal, the date of the final decree or order of the Appellate Court, or

the withdrawal of the appeal or.

3. (where there has been a review of judgment) the date of the decision passed on the review, or

4. (where the decree has been amended) the date of amendment, or

5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order or

6. (where the notice next hereinafter mentioned has been issued) of notice the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908 or

7. where the application is to enforce any payment which the decree or order directs to be made at a (certain date) such date.

Explanation 1.—

Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

THE FIRST SCHEDULE--*contd.*THIRD DIVISION : APPLICATIONS--*contd.*

Where the decree or order has been passed severally against more persons than one distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all-

Explanation II.—"Proper Court" means the Court whose duty it is to execute the decree or order.

Description of suit.	Period of limitation.	Time from which period begins to run.
183.—(180) To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years.	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree

or order has been revived, or some part of the principal money secured thereby or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be,

THE SECOND SCHEDULE.

TERRITORIES REFERRED TO IN SECTION 31.

(See section 31.)

The Presidency of Fort St. George. The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William. The United Provinces of Agra and Oudh. Burma. The Central Provinces. Ajmer-Merwara.

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See section 32.)

Year,	No.	Short title.	Extent of repeal.
1877	XV	The Indian Limitation Act, 1877	The whole.
1877	XVII	The Punjab Court's Act 1877	So much as has not been repealed.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1867" and after section 107, from the words "and whereas" to the end of the Act.
1881	V	The Probate and Administration Act, 1881.	Section 156.
1887	IX	The Provincial Small Causes Courts Act, 1887	Section 36.
1888	VII	The Civil Procedure Code Amendment Act, 1888	Section 36. In the title and in the preamble, the words "and the Indian Limitation Act, 1877," and of section 66 so much as has not been repealed.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877," and section I.
1899	X	The Carriers Act, 1899.	Section 3.
1900	VI	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900	NI	The Indian Limitation Amendment Act, 1900.	The whole.
1906	VI	The Presidency Small Cause Courts Act, 1905.	Section 5.

NEW LAW BOOKS.

PRACTITIONER'S HAND-BOOKS.

Case Noted Editions,

	Rs
1. Transfer of Property—commentary (1908) ...	4
2. Mamlatdar's Courts Act	2
3. Guardians and Wards Act	2
4. Provincial Insolvency Act	2
5. New Civil P. Code case noted	4
(To Subscribers of Lawyer)	2
6. New Limitation Act case noted	3
7. Evidence Act 3rd Edition (1908)	4
8. Trusts Act (400 pages)	3

To be had of

The Manager,

"Lawyer" Office, BOMBAY.

✓
Reg. No. B. 276.

Vol. IX

March 1st, 1908.

No. 3.

THE
Lawyer.

EDITOR

TRIKAMLAL RANCHHODLAL DESAI B.A., LL.B.,
Vakil, High Court, Bombay.

CONTENTS		Page.
PART I.	Digest of reported Indian Cases (Civil).	93-138
PART II.	" (Criminal)	23-32
PART III.	" English & American Cases.	7-8
PART IV.	Unreported Indian Cases.	...
PART V.	Acts of Supreme Council.	3-4
PART VI.	Acts of Provincial Councils.	...
PART VII.	Privy Council Cases.	23-32
PART VIII.	Government Notifications & H. C. Circulars.	5-8
PART IX.	Gleanings—Miscellany—Humourous side—Reviews.	7-8
PART X.	Index of Cases followed and dissented from.	...

(*All Rights Reserved.*)

BOMBAY.

158, GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India.

10 Sh. Foreign. Single copy 8 Annas.

THACKER, SPINK & CO.'S LAW PUBLICATION.
EXPECTED SHORTLY. *Demy 8vo, Cloth, Bs. 16.* EXPECTED SHORTLY

HINDU FAMILY LAW
As Administered in British India.

BY
ERNEST JOHN TREVELYAN, D.C.L.
Barrister-at-Law; Fellow of all Souls College, Oxford; Reader in Indian Law in the University of Oxford; Late a Judge of the High Court Calcutta.

CONTENTS.—Table of Cases Cited—Table of Statutes, Regulations, and Acts Cited—Introduction—Husband and Wife—Relationship of Parent and Child, and Adoption—Parent and Child—The Joint Family and its property—Management and Disposal of Property of Joint Family—The Debts of a Father under the Mitakshara Law—Partition.

IN ACTIVE PREPARATION.
A COMMENTARY ON THE CODE OF CIVIL PROCEDURE 1908.

BY **J. G. WOODROFFE, M.A., B.C.L.**
One of the Judges of the High Court of Judicature at Fort William in Bengal,
and
SYED AMEER ALI, M.A., C.I.E.,
Late a Judge of the High Court of Judicature at Fort William in Bengal.

NOW READY. **NOW READY.**
Royal 8 vo. leather back, cloth sides, Rs. 18; Half English Law Calf, Rs. 20.

FOURTH EDITION.

The Law of Evidence
APPLICABLE TO BRITISH INDIA.

BY
SYED AMEER ALI, M.A., C.I.E.
Barrister-at-Law, Late a Judge of the High Court of Judicature at Fort William in Bengal.

AND
JOHN GEORGE WOODROFFE, M.A., B.C.L.
Barrister-at-Law, a Judge of the High Court of Judicature at Fort William in Bengal.

Royal 8vo. Cloth, Rs. 15.

**COMMENTARIES ON THE TRANSFER OF
PROPERTY ACT.**

Act IV of 1882 amended by Act III of 1885 and other Acts.

BY
H. H. SHEPHERD, M.A., & K. BROWN, M.A.
SIXTH EDITION.
Thoroughly revised and considerably enlarged.

Thaker, Spink & Co.,
P. O. BOX 54, CALCUTTA.

Telegrams:—"Bookshelf, Calcutta."

Branch at Simla

Estab. 1980.] **R. CAMBRAY & CO.,** [Estab. 1890.

Law Booksellers & Publishers 6 & 8½ Hastings St. Calcutta.

THE INDIAN LAW REPORTS.

Government Publication! Brand New! Country Calf!

(Orders to be accompanied with remittance $\frac{1}{2}$ the amt. and balance per V.P.)

Complete sets 1876-1907 (32 years) complete series (*i. e.*, Reports of 4 High Courts. Country Law calf gold lettered, and initialed Rs. 765. Calcutta Series Half Law Cf. at Rs. 11-0 per year. Mad., Bombay & Allahabad. Do. at Rs. 7-0 per year. Complete Series (4 H. Cts.) (Do.) Rs. 24-8 per year. *Any Vol. of any Year any series supplied I. L. R.* Calcutta 1898 Mad. 1888, 90, 96, 97 Bombay 1884, 87, 88, 90, 91, & 96 Aild. 1879, 1885 Vol. VII' 91, 97 & 98. O. P. But being reprinted by the Government of Bengal and completed shortly.

Rees (J. D. C. I. E. M. P.) the "Real India" 1908, Rs. 5-10.

O'DONNELL—The causes of present discontents in India. It is a criticism on the Policy of the present Government in 11 Chapters, 8vo. Cloth, 1908, Rs. 2-3.

Cheap Reprints of Valuable Law Reports.—Moore's Indian Appeals 1836-72 in 14 Vols. Rs. 100. Bengal Law Reports 1868-75, 16 Vols. Hf. Cf., Rs. 80—8 Vols. Madras H. C. Reports 1862-75 a hf. cf. Rs. 28—12 Vols. Bombay H. C. Reports. 1863-1875, hf. cf. Rs. C.—3 Vols. Agra H. C. Rpts. 1869-75, & 1 Vol. F. Bench hf. cf. Rs. 15.—7 Vols. N.W.P. High Court Reports, 1869-1875. The 12 Vols. Bom. H. C. 8 Vols. Mad. H. C. Rep. and out of 4 Vols. of Agra H. C. 3 are now ready; Complete Guaranteed.

Now Ready:—Desai's Hand Book of Criminal Cases being a Verbatim Reprint of all Criminal Cases reported in the I. L. R. 1900-'06 complt. in 2 Roy. 8 vols. 1813 pp. '07, Rs. 14 Continuation of Cranenburgh's Hand Book of Criminal Cases, 5 vols. 1876-'99, hf. cf. Rs. 21-4 (The two together Rs. 35-4).

Current English Law, Latest Guaranteed.

Roscoe's—Criml Evidence, 1908, Rs. 21-2. Gale—On Easement, 1908, Rs. 16-13. Williams—Legal Representatives, 1908, Rs. 6-1. Mozley & Whitley—Law Dictionary, 1908, Rs. 7-14. Pollock's—Partnership, 1908, Rs. 6-12.

Foa—L. L. & T. '08 Rs. 20-3. Snell's—Principles of Equity '08 Rs. 14-12. Silbey's—Criml appeal Evidence 1908 Rs. 11-4. Gulson's—Philosophy of Proof 1905 Rs. 10-8 Woodfall—Landlord and Tenant, 1908, Rs. 25-9. Theobald on Wills, 1908, Rs. 23-8. Pollock on Torts, 1908, Rs. 16-13. Campbell—Principles of Eng. Law founded on Blackstone, 1907, Rs. 13-7. Wood and Ritchie—Digest of Overruled Cases, 1907, Rs. 78. Roscoe's—Law of Evidence on the Trial of Action at Nisi Prius '07 2 vols. Rs. 28-8. Jaeson & Gossett's—Investig. of Title, '07 Rs. 11-0. Wills—Theory of Evidence, '07 Rs. 10-9. Eustaci's—Pleadings, '07 Rs. 3-6. Martin—Inter Pleader, '07 Rs. 4-8. Tristram & Coote—Probate, '07 Rs. 17-14. Cockle's—Cases of Evidence, '07 Rs. 4-2. Mac Swinny—On Mines, '07 Rs. 28-4. Webster's—Conditions of sales, '07 Rs. 16-19. Phipsons's—Evidence, '07 Rs. 10-1. Godfroi's Trust and Trustees, '07 Rs. 25-9. Bowstead's—Agency, '07 Rs. 12-6. Highmore's—On Customs Law, '07 Rs. 4-14. Hardwicke's Art of Winning Cases, '07 Rs. 20. Attenborough—Recovery of stolen goods, '07 Rs. 5. Craio's Hard. castles—Statutory Law '07 Rs. 18-13.

Current Indian Law, Latest Eds. Guaranteed.

New Civil P. Code—Compiled and Published by the Govt. of India, 1908, Rs. 2-8. Onningham & Shephard's—Contract Act, 1908, Rs. 19. Ratanlal's—Eng. & Indian Law of Torts, 1908, Rs. 5. Gour's—T. P. Act 3rd. Edt. Vol. 1 1907 Rs. 10. S. N. Ray's Guardian and Wards Act with notes, '07 Rs. 1-8. S. N. Ray's—Arbitration Act with Notee, 1906, Rs. 1-4. N. K. Basu's case noted Contract Act, 1905, Rs. 2. Badden Powell—Land Reve. Administern, '07

Moore's Indian Appeals 1836-73 in 14 vols. hf. cf. Rs. 100—(new)
Sutherland's W. R. 28 vols. hf. cf. as new Rs. 154.

THE Transfer of Property Act. TEXT AND COMMENTARY.

(WITH 7 USEFUL APPENDICES.)

[*Demi 500 pages.* 1908. *Price Rs 4*]

BY

T. R. Desai, B.A., LL.B.,

HIGH COURT PLEADER, BOMBAY.

Features. Object and origin of each section is distinctly set forth.
English and Indian cases distinguished. All sections analysed. Case
Law up to date. **Opinions.**

Madras Law Times (11-4-8).

Mr. Desai is not an amateur in the field of manuals and compilations. He is already well known as the author of no less than eight books on Law and the publisher of an equal number of Law examination guides. His latest work is the T. P. Act. It is practically an enlarged edition of his manual of Equity as far as it relates to the T. P. Act. On a perusal of this work, the first thing that strikes one is the excellence of the author's treatment and the evident pains he has taken to analyse and expound the materials of each section of the Act. It is surprising to find what a fund of information the author has been able to include in his volume of about 450 pages offered at such a cheap price.

Mr. Desai's work is by no means an abridgment of the treatises on the subject but is solely intended to furnish the student with a clear and concise commentary in an unique manner. There are six useful appendices to the book containing analysis of important sections, questions on mortgages, explanations of technical terms list of leading cases, Legal maxims, Digest of recent cases and a copious index. Forms of conveyances for use by the practitioners are also given besides some rules framed under the Act by the High Courts of Bengal and Madras. We have no hesitation in recommending Mr. Desai's work to the legal profession in general and to the law students in particular as a handy book bringing the law on the subject within a moderate range.

Printed at the G. P. Press, Richey Road, Ahmedabad, by S. M. Shah and
Published by Trikamlal Ranchhodlal Desai at 158, Girgaon Back Road, Bombay

THE Lawyer.

EDITOR

TRIKAMLAL RANCHHODLAL DESAI B.A.,LL.B.
Vakil, High Court, Bombay.

CONTENTS,

Page.

PART I.	Digest of reported Indian Cases (Civil).	341-416
PART II.	" " (Criminal)	85-92
PART III.	" English & American Cases.	15-16
PART IV.	Unreported Indian Cases.	...
PART V.	Acts of Supreme Council.	...
PART VI.	Acts of Provincial Councils.	...
PART VII.	Privy Council Cases.	67-78.
	(1) Radha Prasad Mullick v. Ranimoni Dassi. (2) The Bank of Bombay v. Suleman Somji. (3) Debendra Nath Dutt v. The Administrator-General of Bengal. (4) Hanraj v. Sundar Lal, Dwarka Das and Secretary of State for India.	
PART VIII.	Government Notifications & H. C. Circulars, Reviews, Cantonment Code (amendments)	17-24
PART IX.	Gleanings—Miscellany—Humourous side.	17-18
PART X.	Index of Cases followed and dissented from.	...

(All Rights Reserved.)

BOMBAY.

158, GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India.

10 Sh. Foreign. Single copy 8 Annas.

THACKER, SPINK & CO.'S LAW PUBLICATION.
NOW READY *Demy 8vo, Cloth, Rs. 6.* NOW READY.

THE PROBATE & ADMINISTRATION ACT
(ACT V OF 1881)

FULLY ANNOTATED, WITH REFERENCES TO VARIOUS REGULATIONS

By **ALEXANDER KINNEY**
Deputy Administrator-General, Bengal.

Demy 8vo. Cloth. Rs. 3-8.

ADMINISTRATION PRACTICE
IN INDIA

INCLUDING

A History of the Office of Administrator-General of Bengal and a Collection of Forms in Usage under the Administrator-General's Act, the Succession Act, etc., in the Administering Estates of Deceased Persons in India.

By **ALEXANDER P. KINNEY**
Deputy Administrator-General, Bengal.

IN THE PRESS. TO BE PUBLISHED IN AUGUST.

Orders now being registered

1800 to 2000 pages. *Royal 8vo. Probable price, Rs. 22-8.*

A COMMENTARY ON

THE CODE OF CIVIL PROCEDURE, 1908.

BY

J. G. WOODROFFE, M. A., B. O. L.,

One of the Judges of the High Court of Judicature at Fort William in Bengal

AND

SYED AMEER ALI, M. A., C.I.E.,

Late a Judge of the High Court of Judicature at Fort William in Bengal.

NOW READY *Y. Demy 8vo, Cloth, Rs. 16.* NOW READY

HINDU FAMILY LAW

As Administered in British India.

BY

ERNEST JOHN TREVELYAN, D.C.L.

Barrister-at-Law; Fellow of all Souls College, Oxford; Reader in Indian Law in the University of Oxford; Late a Judge of the High Court Calcutta.

CONTENTS.—Table of Cases Cited—Table of Statutes, Regulations, and Acts Cited—Introduction—Husband and Wife—Relationship of Parent and Child, and Adoption—Parent and Child—The Joint Family and its property—Management and Disposal of Property of Joint Family—The Debts of a Father under the Mitakshara Law—Partition.

Thacker, Spink & Co.,
P. O. BOX 54, CALCUTTA.

THE Lawyer.

EDITOR

TRIKAMLAL RANCHHODLAL DESAI B.A., LL.B.,
Vakil, High Court, Bombay.

	CONTENTS	Page
PART I.	Digest of reported Indian Cases (Civil).	417-458
PART II.	" " (Criminal)	93-100
PART III.	" English & American Cases.	17-18
PART IV.	Unreported Indian Cases.	...
PART V.	New Limitation Act, 1908. (Will be issued in form of a book and sent free during this month).	...
PART VI.	Acts of Provincial Councils.	...
PART VII.	Privy Council Cases. Sankaralinga Nadan and ors. v. Raja Rajeswara Dorai alias Mutturamlinga Dorai and ors.	79-82
PART VIII.	Government Notifications & H. C. Circulars, Reviews, Cantonment Code (amendments)	...
PART IX.	Gleanings—Miscellany—Humourous side.	...
PART X.	Index of Cases followed and dissented from.	...

(All Rights Reserved.)

†
BOMBAY.
158, GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India.

10 Sh. Foreign. Single copy 8 Annas.

LAW OF EVIDENCE.

BY T. R. DESAI, B. A. LL., B., H. C. PLEADER.,

GIRGAON—BOMBAY.

3RD EDITION, 1908.

450 PAGES Rs. 4-0.

Text, commentary and 9 useful appendices dealings respectively with:—

(1) Difference between English and Indian Law of Evidence. (2) Maxims bearing on the Law of Evidence. (3) Analysis of important sections. (4) List of leading cases. (5) L. L. B., and Pleaders Examination Question from 1891 to 1907. (5) Recent cases on Evidence Act, 1901-1906. (5) Explanation of technical terms. (8) Problems based on leading cases.

New feature.—A brief summary of the rules relating to examination and cross-examination of witnesses.

Opinions on the 2nd Edition.

The Criminal Law Journal.—Mr Desai has rendered a great service to the Law students in publishing a revised edition of his splendid work on the Law of Evidence. His *treatment of the subject is exceedingly interesting and instructive*. His is a practical work for class use. The complicated rules of evidence have been rendered simple and easy by ingenious analysis. The provisions of the Act have been duly discussed and explained. We must admit that the book has interest usually denied to books of its class. *We do not know of any other book which contains so much and in such elegant form on the Law of Evidence*. We strongly recommend the work to the Indian Students preparing for their Law Examinations.

Madras Law Journal.—It will be useful. There is a clear and useful analysis of the sections of the Act. Reference are given to important decided cases and the differences between the English and Indian Law are also pointed out; seeing that a second edition is called for within 3 years, the book evidently *meets with the wants of students*.

Allahabad Law Journal.—We have had before this occasion to notice *Mr. Desai's well deserved reputation in the Bombay Presidency as writer of handbooks on legal topics*. We have now before us a new edition of his Law of Evidence. The book in its present form contains besides the text of the Act, *seven useful appendices*, comprising, legal maxims, digest of important cases, LL. B., Examination Questions &c. So far as we are aware there is no other handybook which students of this branch of the law is likely to find so helpful for the purpose of obtaining clear notions upon an intricate subject. *Mr. Desai's exposition is clear, concise and methodical*. The book seems to have been *carefully prepared* and may be recommended to law students and junior practitioners.

Printed at the G. P. Press, Richey Road, Ahmedabad, by S. M. Shah and
Published by Trikamlal Ranchhodlal Desai at 158, Girgaon Back Road, Bombay

THE Lawyer.

EDITOR

NIKAMLAL RANCHHODLAL DESAI B.A., LL.B.,

Vakil, High Court, Bombay.

	CONTENTS	Page.
ART I.	Digest of reported Indian Cases (Civil).	459-508
ART II.	" " (Criminal)	101-108
ART III.	" English & American Cases.	19-20
ART IV.	Unreported Indian Cases.	9-10
ART V.	Acts of Supreme Council.	11-12
ART VI.	Acts of Provincial Councils.	9-10
ART VII.	Privy Council Cases.	83-90
	Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh and anr. Atar Singh and ors., v Thakar Singh.	
ART VIII.	Government Notifications & H. C. Circulars, Reviews,	25-30
	Cantonment Code (amendments)	...
ART IX.	Gleanings—Miscellany—Humourous side.	19-20
ART X.	Index of Cases followed and dissented from.	...

(All Rights Reserved.)

BOMBAY.

158, GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India

10 Sh. Foreign. Single copy 8 Annas.

THE INDIAN LAW REPORTS.

Government Publication! Brand New! Country Calf!
(Orders to be accompanied with remittance $\frac{1}{2}$ the amt. and balance per V.P.)
Complete sets 1876-1907 (32 years) complete series (i. e., Reports of 4 High Courts.) Country Law calf gold lettered, and initialed Rs. 76 Calcutta Series Half Law Cf. at Rs. 11-0 per year. Mad., Bomba & Allahabad Do. at Rs. 7-0 per year. Complete Series (4 H. Cts.) (Do. Rs. 24-8 per year. Any Vol. of any Year any series supplied I. L. Calcutta 1898 Mad. 1888, 90, 96, 97 Bombay 1884, 87, 88, 90, 91, & 9 Alld. 1879, 1885 Vol. VII' 91, 97 & 98. O. P. But. Now being reprinted

O'DONNELL'S—The causes of present discontents in India, 8vo. Cloth, 1908, Rs. 2.
Cheap Reprints of Valuable Law Reports.—Moore's Indian Appeals 1836-73 14 Vols. Rs. 100. Bengal Law Reports 1868-75, in 16 Vols. Hf. Cf., Rs. 80.—8 Vols. Madras Ct. Reports 1862-75 a hf. cf. Rs. 28.—12 Vols. Bombay H. C. Reports. 1863-1875, hf. cf. Rs. 10.—3 Vols. Agra H. C. Rpts. 1869-75, & 1 Vol. F. Bench hf. cf. Rs. 15.—7 Vols. N.W. High Court Reports, 1869-1875. (in the Press). The 12 Vols. Bom. H. C. 8 Vols. Mad. H. Rep. and out of 4 Vols. of Agra H. C. 3 are now ready; Complete Guaranteed.

Now Ready:—**DESAI'S** Hand Book of Criminal Cases being a Verbatim Reprint of Criminal Cases reported in the I. L. R. 1900-'06 complt. in 2 Roy. 8vo. vols. 1813 pp. '07, 14 Continuation of CRANENBURGH'S Hand Book of Criminal Cases, 5 vols. 1876-'99, hf. Rs. 21-4 (The two together Rs. 35-4).

Current English Law, Latest Guaranteed.

BOELTON'S—Criminal Appeal, 1908, Rs. 3-12. **MATHEW** On Wills, 1908, Rs. 5. **FRASER**—Libel and Slander, 1908, Rs. 10-2. **DIXON**—Divorce, 1908, Rs. 15-2. **STRAHAN'S** Wills, 1908, Rs. 5-1. **SNELL'S**—Equity, 1908, Rs. 14-12. **BEDDOES**—Mortgage, 1908, Rs. 8-7. **STRAHAN'S**—Property, 1908, Rs. 8-7. **SMITH'S**—Principals of Equity, 1908, Rs. 1. **TALBOT & FORT'S**—Index of Cases 1865-1908 Rs. 25-9. **Robertson on Crown**, Rs. 25-9. **Garrett**—On Nuisance, 1908, Rs. 15-1; **Shirley's** Leading cases on Common Law 1908, Rs. 10-12; **WARRISON'S**—Leading Cases in Criminal Law founded on Shirley, Rs. 10-2. **Roscoe's**—Crimnl Evidence, 1908, Rs. 21-2. **Gale**—On Easement, 1908, Rs. 16-13. **Pollock's**—Partnership, 1908, Rs. 6-12. **Foa**—L. L. & T. '08 Rs. 20-3. **Snell's** Principles of Equity '08 Rs. 14-12. **Silbey's**—Crimnl. appeal Evidence 1908 Rs. 10-12. **Woodfall**—Landlord and Tenant, 1908, Rs. 25-9. **Theobald on Wills**, 1908, Rs. 10-12. **Pollock on Torts**, 1908, Rs. 16-13. **Campbell**—Principles of Eng. Law founded on Blackstone, 1907, Rs. 13-7. **Wills**—Theory of Evidence, '07, Rs. 10-9. **Cockle's**—Cases of Evidence, '07 Rs. 4-2. **Hardwicke's** Art of Winning Cases, '07 Rs. 20.

Current Indian Law, Latest Eds. Guaranteed

BANERJIA (D. C.) Law of Arbitration on in India, 400 pp. 08. Rs. 1 of Sohoni's—Crim. Proc. Code. 08. Rs. 15. **Muddiman**—Proc. 1. Insolvency Act 08. Rs. 4-8. **KINNEY**—Probate Administration Act, 1908, Rs. 6.

VISVANATHA SASTRI—Commentaries on the New Civil P. Code—(Act V of 1908) 1040 p. 8vo. Rs. 8-0; **DESAI**—Index of Cases, 1811-1907, Second Revised Edn., 1908, Rs. 9. **GHOSH (J. C.)** T. L. L. 1904, Rs. 10-0. **Watson's**—Principles of Criminal Law in India 1907, Rs. 5-0; **Brown & Shephard's**—Transfer of Property, 1907, Rs. 15-0; **Mookerji**—Law of Purdanashin's in British India, 1906, Rs. 4-0; **Trevelyan's** Hindu Family Law, 1908, Rs. 16-0. **Chariar & Cowdell's**—Law of Insolvency. & Bankruptcy, 1908, Rs. 6-8.

Cunningham & Shephard's—Contract Act, 1908, Rs. 19. **Ratanlal Law of Torts** 1908, Rs. 5. **Gours**—T. P. Act 3rd. Edt. Vol. I 1907 Rs. 10. Vol. III 1906, Rs. 10 & Vol. II in Press. Rs. 10. **S.N. Ray's** Guardian and Wards Act with notes, '07 Rs. 1-8.—Arbitration with Notes, 1906, Rs. 1-4. **N.K. Basu's** case noted Contract Act, 1905, Rs. 2. **Badden Powell**—Land Reve. and Tenure in British India, '07. Rs. 3. **ILBERT'S**—Govt. of India, 1908, Rs. 10.

Moore's Indian Appeals 1836-73 in 14 vols. hf. of Rs. 100—(new Sutherland's W. R. 28 vols. hf. of as new Rs. 154.

THE Lawyer.

EDITOR

TRIKAMLAL RANCHHODLAL DESAI B.A.,LL.B.,

Vakil, High Court, Bombay.

CONTENTS		Page
PART I.	Digest of reported Indian Cases (Civil).	509-552
PART II.	" " (Criminal)	109-124
PART III.	" English & American Cases.	...
PART IV.	Unreported Indian Cases.	...
PART V.	Acts of Supreme Council.	...
PART VI.	Acts of Provincial Councils.	...
PART VII.	Privy Council Cases.	91-94
	Mahomed Ali Haidar Khan v. Secretary of State for India in Council.	
PART VIII.	Government Notifications & H. C. Circulars, Reviews,	31
PART IX.	Gleanings—Miscellany—Humourous side.	21
PART X.	Index of Cases followed and dissented from.	5-10

(All Rights Reserved.)

BOMBAY.

158 GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India.

10 Sh. Foreign. Single copy 8 Annas.

Estab.
1890

R. CAMBRAY & CO.,

Estab.
1890

Law Booksellers & Publishers 6 & 8½ Hastings St. Calcutta.

THE INDIAN LAW REPORTS.

Government Publication! Brand New! Country Calf!
(Orders to be accompanied with remittance $\frac{1}{2}$ the amt. and balance per V.P.)
Complete sets 1876-1907 (32 years) complete series (i. e., Reports of 4 High Courts.) Country Law calf gold lettered, and initialed Rs. 765.
Calcutta Series Half Law Cf. at Rs. 11-0 per year. Mad., Bombay & Allahabad Do. at Rs. 7-0 per year. Complete Series (4 H. Cts.) (Do.) Rs. 24-8 per year. Any Vol. of any Year any series supplied I. L. R. Calcutta 1898 Mad. 1888, 90, 96, 97 Bombay 1884, 87, 88, 90, 91, & 96 Aild. 1879, 1885 Vol. VII' 91, 97 & 98. O. P. But. Now being reprinted.

O'DONNELL'S—The causes of present discontents in India, 8vo. Cloth, 1908, Rs. 2.
Cheap Reprints of Valuable Law Reports.—Moore's Indian Appeals 1836-72 in 14 Vols. Rs. 100. Bengal Law Reports 1868-75, in 16 Vols. Hf. Cf., Rs. 80.—8 Vols. Madras H. Ct. Reports 1862-75 a hf. cf. Rs. 28.—12 Vols. Bombay H. C. Reports. 1863-1875, hf. cf. Rs. 30.—3 Vols. Agra H. C. Rpts. 1869-75 & 1 Vol. F. Bench hf. cf. Rs. 15.—7 Vols. N.W.P. High Court Reports, 1869-1875. (in the Press). The 12 Vols. Bom. H. C. 8 Vols. Mad. H. C. Rep. and one of 4 Vols. of Agra H. C. 3 are now ready; Complete Guin. d.

Current English Law, Latest Guaranteed.

DICKEY'S—Conflict of Laws, '08 Rs. 20 3. **Eustace's**—Pleadings, 1908 Rs. 3-6. **Ingpin's** Executors, 1908. Rs. 16-13. **Smith's**—Collisions 1908. Rs. 3-6. **Niedas**—Formation of Companies, 1908 Rs. 13-2. **Folkard's**—Slander & Libel, '08. Rs. 23-10. **Wise on Riot** '09. Rs. 3-12. **Tophaw's**—Real Prop., '08. Rs. 7-12.
BOULTON'S—Criminal Appeal, 1908, Rs. 3-12. **MATHEW** On Wills, 1908, Rs. 5-6. **FRASER**—Libel and Slander, 1908, Rs. 10-2. **DIXON**—Divorce, 1908, Rs. 15-2. **STRAHAN'S**—Wills, 1908, Rs. 5-1. **SNELL'S**—Equity, 1908, Rs. 14-12. **BEDDOES**—Mortgage, 1908, Rs. 8-7. **STRAHAN'S**—Property, 1908, Rs. 8-7. **SMITH'S**—Equity, 1908, Rs. 14-2.
TALBOT & FORT'S—Index of Cases 1865-1908 Rs. 25-9. **Robertson on Crown**, 1908, Rs. 25-9. **Garrett On Nuisance**, 1908, Rs. 15-1. **Shirley's** Leading cases on Common Law, 1908, Rs. 10-12. **Warburton's**—Leading Cases in Criminal Law founded on Shirley, 1908, Rs. 16-2. **Roscoe's**—Criml. Evidence, 1908, Rs. 21-2. **Gale on Easement**, 1908, Rs. 16-13. **Pollock's**—Partnership, 1908, Rs. 6-12. **Foa—L. L. & T.** '08 Rs. 20-3. **Snell's** Equity '08 Rs. 14-12. **Silbey's**—Criml. appeal Evidence 1908 Rs. 11-4. **Woolfall**—Landlord and Tenant, 1908, Rs. 25-9. **Theobald on Wills**, 1908, Rs. 23-6. **Pollock on Torts**, 1908, Rs. 16-13. **Campbell**—Principles of Eng. Law founded on Blackstone, 1907, Rs. 13-7. **Wills**—Theory of Evidence, '07, Rs. 10-9. **Cockle's**—Cases of Evidence, '07 Rs. 4-2.

Current Indian Law, Latest Eds. Guaranteed

WOODROFF'S—Notes on Civil Pro. '08. Rs. 22-8. **BANERJIA (D. C.)** Law of Arbitration in India, 400 pp. '08. Rs. 10. **Sohnis**—Crim. 1 Proc. Code. '08. Rs. 15. **Muddiman**—Provn. Insolvency Act '08. Rs. 4-8.
VISVANATHA SASTRI—Commentaries on the New Civil P. Code—(Act V of 1908) 1040 p. 8vo. Rs. 8-0. **DESAI**—Index of Cases, 1811-1907, Second Revised Edn., 1908, Rs. 9. **Gh. (J. C.) T. L. L.** 1904, Rs. 10-0. **Watson's**—Principles of Criminal Law in India 1908, Rs. 5-0. **Brown & Shephard's**—Transfer of Property, 1907, Rs. 15-0. **Mookerji**—Law of Purdanasheen in British India, 1906, Rs. 4-0. **Travelyan's** Hindu Family Law, 1908. Rs. 16-0. **Chariar & Cowdell's**—Law of Insolvency & Bankruptcy, 1908. Rs. 6-8.

Gunningham & Shephard's—Contract Act, 1908, Rs. 19. **Ratanlal Law of Torts**, 1908, Rs. 5. **Gour's**—F. P. Act 3rd. Edt. Vol. I 1907 Rs. 10. Vol. III 1906, Rs. 10 & Vol. II in Press. Rs. 10. **S. N. Ray's** Guardian and Wards Act with notes, '07 Rs. 1-8. **Arbitration Act with Notes**, 1906, Rs. 1-4. **N.K. Dasu's** case noted Contract Act, 1905, Rs. 2. **Badden Powell**—Land Reve. and Tenure in British India, '07. Rs. 3. **LIBERT'S**—Govt. of India, 1908, Rs. 1-8.

Moore's Indian Appeals 1836-73 in 14 vols. hf. cf. Rs. 100—(new)
Sutherland's W. R. 28 vols. hf. cf. as new Rs. 154.

DEC 28 1908

Reg. No. B. 276.

Vol. IX

December 1st, 1908.

No. 12.

THE Lawyer.

EDITOR

TRIKAMLAL RANCHHODLAL DESAI B.A., LL.B.
Vakil, High Court, Bombay.

CONTENTS		Page
PART I.	Digest of reported Indian Cases (Civil).	553-596
PART II.	" " (Criminal)	125-132
PART III.	" English & American Cases.	...
PART IV.	Unreported Indian Cases.	11-12
PART V.	Acts of Supreme Council.	13-16
PART VI.	Acts of Provincial Councils.	...
PART VII.	Privy Council Cases.	95-108
	Mahomed Ali Haidar Khan v. Secretary of State for India in Council. (2) Phe Bank of Bom- bay v. Suleman Somji. (3) Kalka Parshad v. Mathura Parsad.	
PART VIII.	Government Notifications & H. C. Circulars, Reviews,	32-39
PART IX.	Gleanings—Miscellany—Humourous side.	22-23
PART X.	Index of Cases followed and dissented from.	...

(All Rights Reserved.)

BOMBAY.

158 GIRGAON BACK ROAD.

Annual Subscription—Post Free. Rs. 4 for India.

10 Sh. Foreign. Single copy 8 Annas.

Law Booksellers & Publishers 6 & 8½ Hastings St. Calcutta.

THE INDIAN LAW REPORTS.

Government Publication! Brand New! Country Calf!
(Orders to be accompanied with remittance $\frac{1}{2}$ the amt. and balance per V.P.)

Complete sets 1876-1907 (32 years) complete series (i. e., Reports of 4 High Courts.) Country Law calf gold lettered, and initialed Rs. 765.

Calcutta Series Half Law Cf. at Rs. 11-0 per year. Mad., Bombay & Allahabad Do. at Rs. 7-0 per year. Complete Series (4 H. Cts.) (Do.) Rs. 24-8 per year. Any Vol. of any Year any series supplied I. L. R. Calcutta 1898 Mad. 1888, 90, 96, 97 Bombay 1884, 87, 88, 90, 91, & 96 Alld. 1879, 1885 Vol. VII' 91, 97 & 98. O. P. But. Now being reprinted.

O'DONNELL'S—The causes of present discontents in India, 8vo. Cloth, 1908, Rs. 2.
Cheap Reprints of Valuable Law Reports.—Moore's Indian Appeals 1836-72 in 14 Vols. Rs. 100. Bengal Law Reports 1863-75, in 16 Vols. Hf. Cf., Rs. 80—8 Vols. Madras H. Ct. Reports 1862-75 a hf. cf. Rs. 28—12 Vols. Bombay H. C. Reports. 1863-1875, hf. cf. Rs. 9.—3 Vols. Agra H. C. Rpts. 1869-75. & 1 Vol. F. Bench hf. cf. Rs. 15.—7 Vols. N.W.P. High Court Reports. 1869-1875. (in the Press). The 12 Vols. Bom. H. C. 8 Vols. Mad. H. C. Rep. and our of 4 Vols. of Agra H. C. 3 are now ready; Complete Guamtd.

Current English Law. Latest Eds Guaranteed.

ANNUAL PRACTICE—1909, 3 vols., Rs. 21-6. PAGET—On Banking, '08, Rs. 9-6. BEALS—Cardinal Rules, '08, Rs. 13-7. LUMLEY'S—Public Health, '08, Rs. 52-8. OLIPHANT—Law of Horses, '08, Rs. 13-7. DICKY'S—Conflict of Laws, '08 Rs. 20-3. Eustace's—Pleadings, 1908, Rs. 3-6. Ingpen's—Executors, 1908, Rs. 16-13. Smith's—Collisions 1908 Rs. 3-6. Nicolas—Formation of Companies, 1908 Rs. 13-2. Folkard's—Slander & Libel, '08, Rs. 23-10. Wise on Riots, '07, Rs. 3-12. Topham's—Real Prop'ty, '08, Rs. 7-12. BOULTON'S—Criminal Appeal, 1903, Rs. 3-12. MATHEW On Wills, 1908, Rs. 5-2. FRASER—Libel and Slander, 1903, Rs. 10-2. DIXON—Divorce, 1908, Rs. 15-2. STRAHAN'S—Wills, 1908, Rs. 5-1. SNELL'S—Equity, 1908, Rs. 14-12. BEDDOES—Mortgage, 1908, Rs. 8-7. STRAHAN'S—Property, 1903, Rs. 8-7. SMITH'S—Equity, 1903, Rs. 14-2. TALBOT & FORT'S—Index of Cases 1865-1908 Rs. 25-9. Robertson on Crown, 1908 Rs. 25-9. Garrett—On Nuisance, 1908, Rs. 15-1; Shirley's Leading cases on Common Law, 1908, Rs. 10-12; Warburton's—Leading Cases in Criminal Law founded on Shirley, 1908, Rs. 16-2. Roscoe's—Criml Evidence, 1908, Rs. 21-2. Gale—On Easement, 1908, Rs. 16-13. Pollock's—Partnership, 1903, Rs. 6-12. Fos-L. L. & T. '08 Rs. 20-3. Snell's—Equity '08 Rs. 14-12. Silbey's—Criml. appeal Evidence 1903 Rs. 11-4. Woodfall—Landlord and Tenant, 1903, Rs. 25-9. Theobald on Wills, 1908, Rs. 23-8. Pollock on Torts, 1908, Rs. 16-13. Campbell—Principles of Eng. Law founded on Blackstone, 1907, Rs. 13-7. Wills—Theory of Evidence, '07, Rs. 10-9. Cockle's—Cases of Evidence, '07 Rs. 4-2.

Current Indian Law. Latest Eds. Guaranteed

WOODROFFE'S—Notes on Civil Pro. '08, Rs. 22-8. HANERJA (D. C.) Law of Arbitration on in India, 400 pp. '08, Rs. 10. Sohoni's—Crim. 1 Proc. Code, '08, Rs. 15. Muddiman—Provd. Insolvency Act '03 Rs. 4-8. POWELL'S—Indian Trusts Act, 1903, Rs. 6.
VISHVANATHA SASTRI—Commentaries on the New Civil P. Code—(Act V of 1908) 1040 pp., 8vo. Rs. 8-0; DESAI—Index of Cases, 1811-1907, Second Revised Edn., 1908, Rs. 9. Ghose (J. C.) T. L. L. 1904, Rs. 10-0. Watson's—Principles of Criminal Law in India 1907, Rs. 5-0; Brown & Shephard's—Transfer of Property, 1907, Rs. 15-0; Mookerji—Law of Purdanasheen in British India, 1906, Rs. 4-0; Trevelyan's Hindu Family Law, 1908, Rs. 16-0. Chariar & Cowdell's—Law of Insolvency & Bankruptcy, 1908, Rs. 6-8.
Cunningham & Shephard's—Contract Act, 1908, Rs. 19. Ratanlal Law of Torts, 1908, Rs. 5. Gours—J. P. Act 3rd. Edt. Vol. I 1907 Rs. 10. Vol. III 1906, Rs. 10 & Vol. II in the Press. Rs. 10. S.N. Ray's Guardian and Wards Act with notes, '07 Rs. 1-8.—Arbitration Act with Notes, 1906, Rs. 1-4. N.K. Basu's case noted Contract Act, 1905, Rs. 2. Badden Powell—Land Reve. and Tenure in British India, '07, Rs. 3. ILBERT'S—Govt. of India, 1908, Rs. 6.

Moore's Indian Appeals 1836-73 in 14 vols. hf. cf. Rs 100—(new)
Sutherland's W. R. 23 vols. hf. cf. as new Rs. 154.

